TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 197.

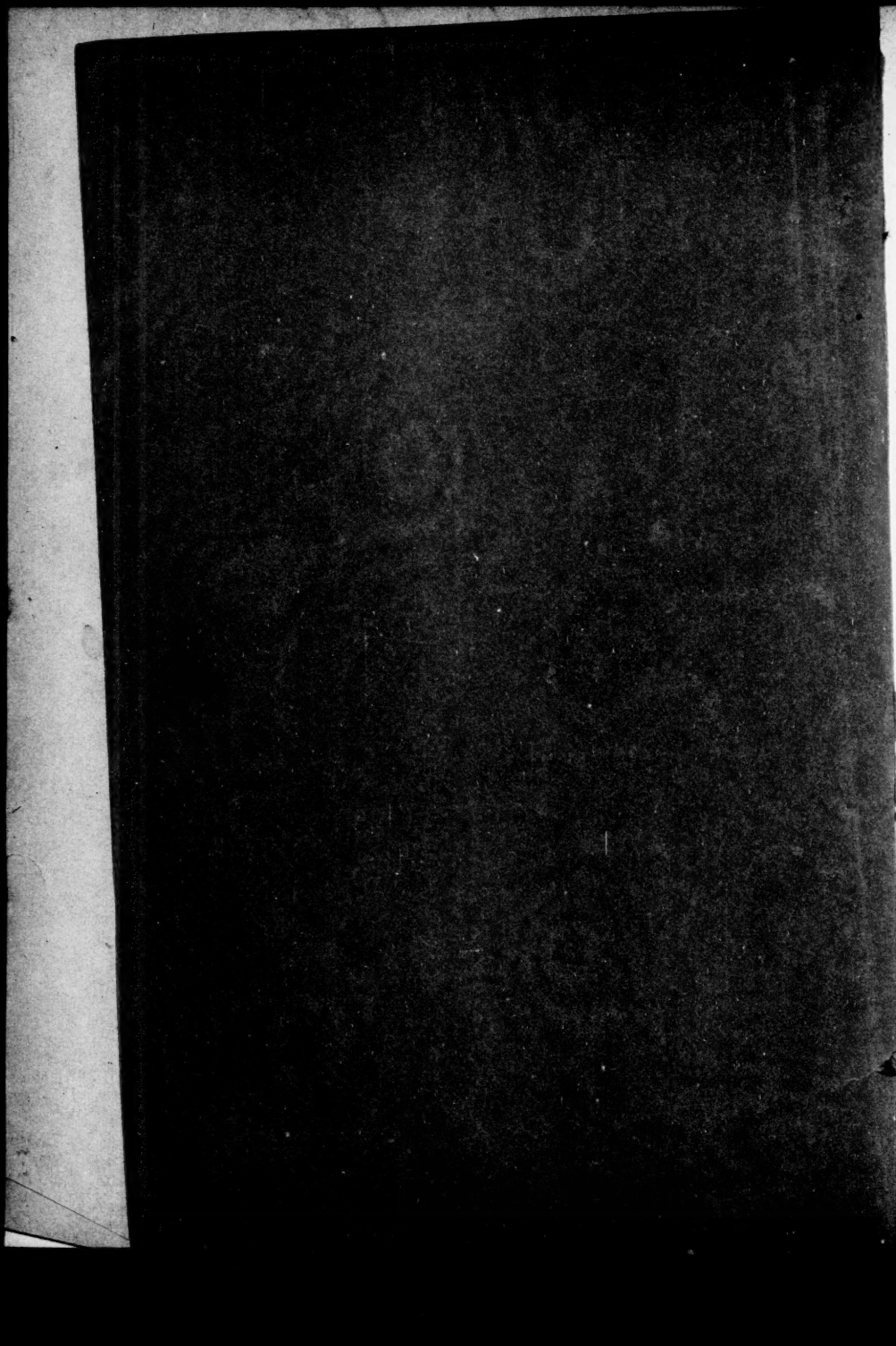
JOHN B. CRIM, APPELLANT,

vs.

JAMES M. HANDLEY, COUNCIL B. WOOTEN, WILLIAM M. PEEPLES, AND WILLIAM H. SMYTH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED OCTOBER 19, 1874.



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1 In the fifth circuit court of the United States of America for the southern district of Georgia.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, began and held according to law, on Thursday after the first Monday (being the sixth day) of November, A. D. 1873, at the city of Savannah, in said southern district of Georgia, present and presiding the honorable William B. Woods, U. S. judge for the fifth judicial circuit, and the honorable John Erskine, U. S. district judge for the districts of Georgia, the following proceedings were had, to wit:

2 JOHN B. CRIM
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, and William H. Smyth, U. S. M. } In equity.

Be it remembered that heretofore, to wit, on the 16th day of July, A. D. 1873, in the fifth circuit court of the United States for the southern district of Georgia, came John B. Crim, complainant, by his solicitors, and exhibited and filed his bill of complaint in said fifth circuit court, as follows:

Bill of complaint.

JOHN B. CRIM
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, and William H. Smyth, U. S. M.

To the judges of the fifth circuit court of the United States for the southern district of Georgia:

3 John B. Crim, a citizen & resident of the town of Dawson, county of Terrell, State of Georgia, and southern district thereof, brings this his bill against James M. Handley, a citizen and resident of the city, State, & county of New York, the only principal defendant against whom any substantial relief is herein prayed; Council B. Wooten, esquire, a citizen and resident of the city of Macon, county of Bibb, & said State of Georgia, and southern district thereof, an attorney at law of said James M. Handley; William M. Peeples, of the town of Dawson, county of Terrell, and said State of Georgia, and William H. Smyth, United States marshal for the State of Georgia, residing in Fulton County, State of Georgia, & northern district.

And thereupon your orator, complaining, says, that heretofore, to wit, on the first day of February, in the year 1866, your orator, Benjamin F. King, William M. Peeples, and John G. Trammell entered into a partnership for the purpose of engaging in a general mercantile business or trade in the said town of Dawson, and for that purpose purchased of J. W. Buffington & Co., a firm composed of John W. Buffington, John P. Stafford, Oziel A. Howe, Hiram C. Brown, and the said William M. Peeples, then doing business as a firm of merchants in Dawson, a large

stock of general merchandise, which said J. W. Buffington & Co. then had on hand and in their store, at & for the price or sum as then agreed on of eighteen thousand seven hundred and forty-six dollars & ninety-six cents, (18,746.96,) which was then paid by said King, Crim & Co., as follows:

18,746.96.	1 note on Boyd & Wilson, endorsed by King, Crim & Co., due 1 January, 1867	$4,188 00
4	1 tract of land from Mrs. Cobb	2,500 00
	Cash, as per receipts	2,324 50
9 b. c., 4,365 lbs., @ 34c		1,484 10
5 " 2,920 " " 36c		1,051 20
W. M. Peeples, agent, ufr		1,749 44
Cash, as per receipts		858 08
Note King, Crim & Co.	1 Apl	1,147 91
" " " "	1 May	1,147 91
" " " "	1 June	1,147 91
" " " "	1 July	1,147 91
		18,746 96

& having so purchased & paid for said goods, King, Crim & Co. took possession thereof & commenced business. Very soon afterwards said Benjamin F. King sold to the balance of the firm his interest therein, retired from the business, moved off, and afterwards died, & from the middle of May to the first of June thereafter orator bought out John G. Frammell & then sold out all his interest in said business to E. B. Loyless & Co., a new firm composed of Elliott B. Loyless and the said William M. Peeples, the said E. B. Loyless & Co. agreeing, as a part of the price paid for said interest of orator & Trammell, to pay off and discharge all the debts of firm King, Crim & Co., including most especially the firm-notes given to J. W. Buffington & Co., for $1,147.91 each, & respectively due on 1st of April, May, June, & July, 1866, as aforesaid, or whatever balance might be due thereon, orator to be at no further trouble or risk in the matter.

Your orator showeth that at the time of the said purchase, aforesaid, by King, Crim & Co. it was represented by the members of that firm that there were no debts outstanding & unpaid against J. W. Buffington & Co., but as all parties, except Peeples, intended, as they did, *except Peeples*, to return at once to one of the Northern States, from whence they came—New York, perhaps—for the protection of Peeples, who was one of the old firm & liable for all such debts if there should be any, it was agreed amongst all the parties at the time that these four notes of King, Crim & Co.'s should be deposited in the hands of one Harrison Rogers, then & now a citizen of the town of Dawson, who should hold said notes as a common depositary or agent of both parties, so that if any debts should appear against said old firm & Peeples or King, Crim & Co. should pay off any of them, such amounts so paid should be credited on said notes & be received in payment thereof to the incident thereof. Very soon thereafter S. Roosevelt & Co. sent out for collection a note & account against said J. W. Buffington & Co. for the aggregate amount of $1,045.04, which said Peeples, on the 28th March, 1866, took up & the control thereof by giving to said Roosevelt & Co. the two notes of King, Crim & Co., one note for 411.17 & the other for $642.14, both due at one month thereafter & both amounting in the aggregate $1,053.31, increased to that sum by accummulated interest. These notes of King, Crim & Co. so given by Peeples were afterwards paid off

as hereinafter stated. The firm of King, Crim & Co. also paid off, about the same time or a little earlier, a debt of J. W. Buffington & Co. to one J. W. Edwards for $232.50, and after these debts were so taken up Peeples applied to said Harrison Rogers to have them credited as part payments on the said four notes of King, Crim & Co. to Buffington & Co., still in his hands; which was not only refused, but he immediately placed all four of the notes, although only one of them was then due, in the hands of H. M. Harper, attorney at law at Dawson, for collection, who immediately, to wit, on the 13th April, 1866, placed one of the
6 notes—the one then due—in suit to the May term of the superior court for that county of Terrell, for the year 1866, the term commencing on the fourth Monday in May. Peeples, whom orator regarded a thorough merchant from experience & education, & who, in consequence, was the managing member of the business department of the firm, immediately employed Col. Council B. Wooten, then a practising lawyer, as he is now, and residing at that time in Dawson, to defend said suit & to file a bill in equity for that purpose, which the said Wooten immediately did, under the direction of said Peeples, to enforce the agreement aforesaid, have the payment of the debts of J. W. Buffington & Co. so paid by Peeples, as aforesaid, out of the assets of the firm of King, Crim & Co., or by charging that firm therewith as aforesaid, & to have the balance, whatever balance might be due, on said notes applied to the extinguishment of the debts of J. W. Buffington & Co., so far as might be, to *injure* the suit brought on the note then due & to enjoin the transfer of the other notes. The bill was filed on behalf of King, Crim & Co. against J. W. Buffington & Co. & the said Harrison Rogers, sworn to by Peeples, sanctioned by the chancellor, injunction ordered & returned to the same May term, 1866, as the other suit in favor of J. W. Buffington & Co. against King, Crim & Co.

Your orator further showeth that amongst the stock of goods purchased as aforesaid, and a part thereof, was a lot of 988¾ bushels of cotton-seed, which Buffington & Co. represented and sold King, Crim & Co. as sound & good seed, fit for planting, & orators so bought at one dollar per bushel & afterwards so sold & warranted them to planters for planting seed. They proved to be unsound & unfit for this purpose, as they did not come up, & were consequently lost to King, Crim & Co; this fact, defence on equity, was not embraced in that bill, because the defence had not at that time, the 14th April, '66, when the bill
7 was filed, developed or manifested, it then being too early in the season for that purpose.

About this time other debts against J. W. Buffington & Co. that they had mainly contracted as merchants in New York & failed to pay, made their appearance, of which the following is a statement:

1 due-bill, in favor of B. F. King, given in Dec'r, '65, & transferred to King, Crim & Co. on 14th Apl., '66, for 432.00. This due-bill Peeples had paid from out of the assets of King, Crim & Co., and belonged to that firm.

1 note in favor of Handland, Titus & Co., 2 Sept. '65, due at 4 mos., for principal sum of 570.46; 1 note, in favor Longstreet, Sedgewick & Co., dated Oct. 27, '65, & due at 4 mos., for 1,313.56; 1 note, same parties, 10 Oct., '65, due at 4 mos., 135.38; 1 do. of Tracy, Irwin & Co., Nov'r 4, '65, at 4 mos., for 685.74; 1, same parties, Oct. 10, '65, at 4 mos., for 422.04; 1 a/c of Pardee, Bates & Co., made in 1865, for 2,048.54.

The creditors knowing Peeples and having confidence in his integrity, & knowing that he had nothing outside of his interest in the partnership business of King, Crim & Co., turned over the notes & debts to him

to collect or secure if possible out of the assets of J. W. Buffington & Co. that he could find, & agreeing to allow him certain commission & compensation for such service, orator and no other member of the firm knowing anything of this arrangement, having no interest in it whatever. Peeples placed all these claims in the hands of the said Council B. Wooten, as the attorney of those creditors, for collection, who sued out attachment & had the firm of King, Crim & Co. as it then stood, & E. B. Loyless & Co., afterwards succeeding to that firm, served with summons of garnishment to answer what they were indebted to or
8 what effects of the said J. W. Buffington & Co. they had in their hands, and on the 29th May, 1866, orator, John G. Trammell, William M. Peeples, & B. F. King answered said summons of garnishement, admitting the giving of the notes aforesaid, & claiming payments or credits or deductions, as follows:

Pay'ts to S. Roosevelt of	1,052 31
" of B. F. King's on their note	432 00
" to J. W. Edwards for J. W. B. & Co	232 50
Cotton-seed warranted good, but worthless	988 75
In all	$2,706 56
Leaving a balance on said notes of	1,885 08

The said King, Crim & Co. were also indebted as endorsers on the note of Boyd & Wilson for the sum of $4,188.00, due 1 Jan'y, 1867, & they so answered, but that note was arranged & paid otherwise by Boyd & Wilson, but how, when, or to whom is unknown to orator, but he supposes it was satisfactory to the creditors or their counsel, as he has since heard nothing more of it. Orator is of the opinion it was paid Council B. Wooten.

Soon after this orator sold out to E. B. Loyless & Co. as aforesaid, & after that he had or felt no more or further interest in the matters in litigation, & took none whatever, leaving the whole business in all its parts to his vendor, knowing nothing of the business whatever & caring nothing as to what was done, excepting to inquire occasionally of Mr. Wooten as to how they were getting on, & was told that the debt was being paid up; but relying entirely on the obligation & agreement of the said E. B. Loyless & Co., & believing in good faith & trusting with the utmost confidence in their integrity & their performance of their agreement with orator, & in the council, the said Wooten, in whose hands the matters were intrusted, supposing that all would be done that was necessary & proper to be done & orator saved harmless.

9 At the November term, 1866, commencing on the fourth Monday thereof, of Terrell superior court, the said Peeples caused the before-mentioned bill of King, Crim & Co. to be amended; in which amendment he set up the payment of the note to King as before stated; stated the other debts of J. W. Buffington & Co., hereinbefore scheduled; & asked that they might be brought in & participate in the payment out of whatever balance might be due on the notes aforesaid of King, Crim & Co. This amendment was also sworn to by said Peeples, & was filed as well for the benefit of the said creditors of J. W. Buffington & Co. as well as for the benefit King, Crim & Co., but most especially for the benefit of the said Peeples, & was prepared & filed by Wooten & Hoyl as the counsel of said creditors as well as of King, Crim & Co., & of said Peeples most particularly, orator not being consulted in the matter of filing or in the subsequent action thereon. In this amendment the said Peeples & his said counsel again most strangely & un-

accountably failed for some inexplicable cause to orator, perhaps it might have been a mere forgetfulness, for it was not then known to both, to bring forward in said amended the defence of King, Crim & Co. to said notes on account of the worthless cotton-seed which formed a part of the consideration of said notes. At that term of the court, the November term, 1866, a decree was taken on said bill & amended bill by the consent of said Council B. Wooten & his partner, L. C. Hoyl, as the attorneys for the aforesaid creditors of J. W. Buffington & Co. and of King, Crim & Co., by the direction also of said Peeples, more especially of the said Peeples, and F. M. Harper as the attorney of J. W. Buffington & Co., & the said Harrison Rogers, agent, as aforesaid, who was also a party duly served with said bill, & said decree duly signed by the foreman of the special jury of said court selected by the parties according to the usage & practice of said court under the laws of the State of Georgia, which decree was duly entered up & signed by
10 counsel, entered on the minutes of the court, & made the judgment & decree thereof, in which it was specially decreed that the payments made by King, Crim & Co., or rather by Peeples for them, of the claim of Roosevelt & Co., J. W. Edwards & B. F. King against J. W. Buffington & Co., should be, & was thereby, allowed as credits or payments on said notes; that Harrison Rogers should proceed to collect said notes, and show said payments or setts-off, & any other of said inventoried debts of J. W. Buffington & Co. that might be paid by King, Crim & Co.; & to report to & bring all payments & collections made & of his acting & doing in the premises to the next term of said court, all to be subject to the order & direction of said court; a copy of which said bill, amendment, & exhibit thereto, & the proceeding' had thereon, is attached, together with the original notes & account in favor of S. Roosevelt against J. W. Buffington & Co., & the two notes of King, Crim & Co., given by Peeples & afterwards in lieu of said notes, & also a copy of the answer of the several members of the firm of King, Crim & Co., to the summons of garnishement as aforesaid, all marked "Exhibit A, B, C," to which orator prays leave of reference.

Orator further showeth unto your honors that on the 20th day of June, 1867, after the rendition of said decree as before said, the said Harrison Rogers, in accordance therewith, turned over to Council B. Wooten & his partner, L. C. Hoyl, as the attorneys representing the claims against J. W. Buffington & Co., mentioned in said bill, the four notes of King, Crim & Co. to J. W. Buffington & Co. hereinbefore described, each for the sum of $1,147.91, & due respect*fu*lly the 1st of April, May, June, & July, the first one credited with 221.68; also, one note on John Higdon & Phillips & Fretwell for $443.62, dated Feb'y 13th, 1866, & due at 90 days, credited with 143.60 at 20th Feb'y, 1866, all of which notes said Wooten & Hoyl received as aforesaid & agreed in writing in a receipt then & there given by them to said Rogers that he, the
11 said Rogers *shall* [should] be discharged & relieved from all obligations & liabilities imposed upon him by said decree so far as said notes are concerned. Said Wooten & Hoyl, attorneys as aforesaid, also at same & on same accounts, received from said Harrison Rogers a receipt of William M. Peeples, dated February 20th, 1866, to J. W. Buffington & Co., for "sundry claims," & it is agreed then & there that said Harrison Rogers retain the amount of Wm. Wooten' note, to viz, 758 & 258, out of money coming from rent of land, making in the aggregate one hundred dollars as compensation for his agency. Received also of Harrison Rogers twenty dollars & twelve cents, balance on rent, all of which was embodied in a receipt signed by said Council B. Wooten

as att'y at law, & Levi C. Hoyl as att'y at law, a copy of which is hereto attached, marked "Exhibit D," to which orator prays the usual leave of reference.

Your orator showeth unto your honor that he is informed, & so believes the fact to be a fact, that *the* all the assets mentioned in said receipt & received by Wooten & Hoyl belonged to J. W. Buffington & Co. as assets that were left by them when they departed from the country, soon after the sale of their stock of goods to King, Crim & Co., & consisted of, besides the notes of King, Crim & Co., a lot of land that King, Crim & Co. let Buffington & Co. have in part payment of the stock of goods; it was this land for which the rent was due referred to in that receipt.

Your orator does not know & cannot say what claims were covered by the receipt of Peeples under the sweeping expression of "sundry claims;" but orator is informed, & so charges the fact to be, that among the claims held by William M. Peeples embraced in that receipt was, among others, the note on Boyd & Wilson for $4,188, due 1 Jan'y, 1867, & what others besides this & the one on Higdon & Phillips &
12 Fretwell, both of which were perfectly solvent & have been beyond doubt collected long since; all of which was received by said Council B. Wooten & his partner, the said Wooten being the principal & controlling member of the firm, went into his hands as attorneys for the creditors aforesaid, & when collected were in extinguishment of the unpaid amounts due on said creditors' claims against the said J. W. Buffington & Co., & were good & available assets for that purpose, far in excess of the amount of said debts & all proper & necessary charges & expenses for collecting the same.

Your orator further showeth that afterwards, at the November term of said court for the year 1867, the said E. B. Loyless & Co. having been garnisheed to answer what they were indebted to or what effects of the said J. W. Buffington & Co. they had in hand, which garnishements as to them were returnable to November term, 1866, of said superior court of Terrell County, & which they in the mean time had answered, in which they had followed the answer of King, Crim & Co. as aforesaid, they, said Loyless & Co., not being otherwise indebted to said J. W. Buffington & Co., save under their aforesaid agreement to King, Crim & Co. to pay the same, & that is that they were indebted to said J. W. Buffington & Co. in the sum of eighteen hundred and eighty-five dollars & eight cents. A judgment of the court at said Nov'r term, 1867, was taken & had against said E. B. Loyless in favor of said attaching creditors as aforesaid for said sum of eighteen hundred & eighty-five dollars & eight cents, with interest, to be collected and distributed among said attaching creditors, a copy of which is hereto attached marked "Exhibit E," to which orators prays leave of reference. From that judgment so rendered an execution was issued & placed in the hands of the sheriff of Terrell County. No judgment was ever taken
13 against King, Crim & Co. on their answer for said amount, for what reason orator does not know, but supposes that *is* was on account of some agreement to that effect between said Wooten & the said Peeples, who together had the whole control of said claims. After this, & before any steps were taken to enforce this judgment against E. B. Loyless & Co., the said Peeples, as one of the firm of E. B. Loyless & Co., in compliance with the agreement of that firm with orator, & under the authority of the decree of the court as aforesaid, paid off to & took a transfer from Haveland, Titus & Co., their said debt against J. W. Buffington & Co. amounting to the whole of principal,

interest, & cost, *to* the sum of $662.21, all of which was, with the consent & approbation of the said Council B. Wooten as a still further reduction of the aforesaid balance due on said notes of King, Crim & Co. of $1,885.08, as ascertained & declared by the judgment of the said sup'r court at the Nov'r term, 1867, at which time it was agreed & consented on all hands that this was the true & only amount then due except some interest. This money was paid to Haveland, Titus & Co., was paid on the 7th October, 1869, & the transfer to Peeples was drawn up by & in the handwriting of said Wooten, though signed by that firm, a copy of which is hereto attached, marked "Exhibit F," to which orator prays the usual leave of reference.

The said Peeples also, in still further reduction of said balance, so ascertained, as aforesaid, on the 4th Dec'r, in the year 1869, paid J. M. Handley, the present defendant, then as the agent of Longstreet, Sedgwick & Co., on the order of said Council B. Wooten, the balance due to said Longstreet, Sedgwick & Co., on their aforesaid claim hereinbefore stated, amounting to the sum of 784$. (Exhibit F.)

The said Peeples had also paid to the attorney of J. W. Buffington & Co., to wit, H. M. Harper, esq., by the consent of the
14 said Council B. Wooten, the sum of two hundred and twenty-five dollars for his fees for prosecution of the claims of said J. W. Buffington & Co. against said firm of King, Crim & Co., on which said Harper held a bill for his said fees. He had also paid to the said Council B. Wooten the sum of three hundred dollars for his fees rendered the said creditors of J. W. Buffington & Co., both of which amounts were paid & received as still for the credits upon & in diminishing the said balance so due as aforesaid. And after these payments so made as aforesaid, when the said sheriff of Terrell County attempted to enforce payment of the execution against the said E. B. Loyless & Co., the said Peeples claimed that the whole of said sum specified in said execution had been paid off except the sum of two hundred dollars, which he admitted was still due & unpaid, & this sum he then & there paid to the said sheriff as in satisfaction thereof, which was received by said sheriff as a credit on said execution & by said sheriff immediately paid over to said Council B. Wooten, the plaintiff's attorney, on said execution, & by him received on that account, & thereupon the said William M. Peeples filed his affidavit of illegality to said fi. fa. on execution, as by the laws of Georgia & according to the practical usages of the court thereof he was authorized to do, & the further prosecution of the collection of said execution thereby suspended, & the said execution & affidavit of illegality by the sheriff was returned to the aforesaid court from which it issued for the trial of the issue thereby made; & when the same afterwards came on for hearing in said court, it appeared that no judgment had ever been rendered in favor of said attaching creditors against the principal debtor & the said judgment as aforesaid rendered,
& the said execution so issued therefrom were all by the order &
15 judgment of said court set aside & declared null & void; & from that time no further steps were taken by said Council B. Wooten or his partner, or the attaching creditors as aforesaid, or the said J. W. Buffington & Co., or any one for them, or any one of them, to proceed further with said attachments, process of garnishement, or suit on the note due first, as aforesaid, in favor of J. W. Buffington & Co. against King, Crim & Co., but the whole was abandoned, & there now remain in court undisposed of, just as the decree left them, nor has any report been made under said decree, as required, or any proceding in court had under the same.

Your orator further showeth unto your honors that after the action of the said court, as last aforesaid, which was at the November, 1869, of said , & after the abandonment or failure on the part of the said creditors of said J. W. Buffington to further prosecute said attachments & garnishements, as aforesaid, & while the said Council B. Wooten, still holding the notes of King, Crim & Co., which he had received, as aforesaid, called upon the said Peeples & demanded of him a settlement of the balance which he claimed was still due on said note, the said Peeples denied, as the said Wooten now reports, that there was anything due on said notes, but insisted that the same was fully paid off, more than paid off, & that there was still due to him a large amount, to wit, the sum of $600, or other large sum, for his commission & compensation in collecting & securing the claims of the said creditors against the said J. W. Buffington, according to their agreement, as hereinbefore referred. The said Wooten then asked the said Peeples to confer with him as to the amount that was conceded to have been paid & that they could agree on as having been paid, and let these amounts be entered as credits on the notes & the real balance be ascertained, or that the amount which only was in controversy be ascertained & that
16 amount only to be left open for adjustment, the said Wooten saying to said Peeples, as he now claims to have said, that he intended to bring suit on said notes for the recovery of the balance due on them, as he was obliged to do, but to which request the said Peeples refused to give attention, insisting that the whole was paid & that there was nothing due. Of this whole interview your orator was ignorant, & has only learned this within the last few days, the said Wooten claiming that there was still a balance due on the notes of between seven & eight hundred dollars, and the said Peeples, that they were paid & overpaid. Here was the whole controversy; nothing was claimed by any one as due on those notes beyond the sum of 800$. And thereupon the said Council B. Wooten, in violation of the terms under which he took said notes from Harrison Rogers & the decree of court, *to* which he himself had procured, *he* placed said notes in the hands of Hines & Hobbs, attorneys at law of this honorable court, with directions to sue the same in this court in the name of the said James M. Handley, without having entered a single credit on said notes, although he knew how much had been paid on them, & on the faith of his seeing to it while they were in his hands under the direction of the court in which said decree was rendered that the rights of all the parties under it would be protected & preserved & all proper deductions made, & collections only made that were really due. The position that he occupied toward the notes & the interests of your orator touching the same was of the very highest confidence & trust. The said Hines & Hobbs, representing said *said* James M. Handley as the plaintiff & holder of said notes, brought suit against your orator & said Peeples, as surviving partners of King, Crim & Co.,
on all four of said notes in same declarations, with no credits or
17 deductions therefrom except a small credit of 221.60 at 20 January, 1867; and your orator does not know how that was made or who entered it there. This suit was commenced & returnable to the November term thereof, 1870. Your orator & the said William M. Peeples appeared by their counsel, R. F. Lyon, whom your orator had employed for that purpose, of the then of Lyon & Irwin & F. M. Harper, & filed their defences thereto of general issue, payment & failure of consideration as to cotton-seed, as hereinbefore set out, & on the trial thereof a verdict was had in favor of said plaintiff for the sum of $3,154.21 & costs, & no interest, the jury by their verdict only allowing

orator credit for the price of the cotton-seed, the amount paid to Harper of 225$ & the credit endorsed on the note of $221.68, counsel fee. Orator moved a new trial on the grounds that the verdict was contrary to the evidence, & on no other ground; which was overruled by the court, a brief of the evidence being prepared, as orator's counsel understood it, but which was not agreed to by plaintiff's counsel or approved by the court. A copy of which said suit, the proceedings thereon, & the said brief of evidence prepared as aforesaid, are hereto attached, marked "Exhibit G," to which orator prays the usual leave of reference.

Orator showeth that said verdict is unconscionably unjust & inequitable, for the reasons already stated, & in the facts already hereinbefore set forth; and orator now comes into this honorable court of equity & asks the said court to grant him a new trial in equity; that the cause be reheard, & justice & equity done your orator. And for grounds to justify & move your honors to grant such new trial above & beyond what was considered by the court of law in the former motion, your orator, in addition to what has already been stated herein, & to show your honors that the failure of full presentation of the facts aforesaid on the said trial, & the want of a successful defence at that time
18 on account of said facts, was from no fault or neglect of your orator or his counsel, showeth that, although he employed counsel as aforesaid, and also F. M. Harper, he depended very greatly for the preparation of the defence thereof on William M. Peeples, & altogether on his evidence as a witness; because the said Peeples, either as one of the firm of King, Crim & Co., or of E. B. Loyless & Co., had made all the payments that were made. He knew the whole history of the transaction, from beginning to end. The whole, in all its parts, transpired under his immediate observation, control, & supervision. It was peculiarly the business of said Peeples to prepare the defence & to give his evidence, as it was in fact his & his partner, Loyless', debt aforesaid, & orator had the right to depend on him, & to believe that he would fully prepare the case so as to make all the defence of which the case was susceptible. Besides, as the said Peeples was an intelligent witness, a practical merchant, &, as he believed, a most reliable man, & worthy of the highest credit in a case like this, when he was so familiar, from actual personal knowledge, with all the facts, orator had the right to trust to the said Peeples' evidence on the trial as sufficient for all purposes, & to believe that none other was or would be necessary. So, when the time set for the trial came on, orator sent said Peeples to Savannah as a witness, paying his expenses himself, so that he could be personally present & on the stand make all the defences plain & clear. Your orator did not attend the trial himself, on account of the expense, because he had already testified by commission & deposition, & he personally knew but little beyond the original purchase, the terms thereof, & the failure of the cotton-seed, & the terms on which his partners & himself sold out & said E. B. Loyless & Co. purchased. He knew but little, if anything, of the payments beyond what the
19 said Peeples or others told him. The payments were all made by Peeples, or by his direction. On the trial of said cause orators offered in evidence certain receipts, as partial payments on these notes made by Buffington & Co. or Brown for them, copied in the brief of evidence hereto attached, & dated 10th & 20th of February. These receipts were found among the old papers of King, Crim & Co., &, as they were all dated after the notes were executed, & long after the trade had been consummated, & as Peeples assured orator he believed in good faith that they were payments on these notes, and that orator was enti-

tled to have allowed as credits or part payments thereof, & he so testified since said trial by an examination of the books of King, Crim & Co., at the commencement of the business, & the statement which is there set down of the said purchases, & how payments were made, & the absence of any entry of cash paid out from the business of those dates on this account, & the correspondence with certain items in said statement, to be seen on second page of this bill, your orator, as well as his counsel, is satisfied that said receipts were properly rejected by the court & jury in the trial as payments, and orator only mentions the fact here to account for the introduction thereof, to justify himself & his counsel in that matter, & to show to your honors how he was misled & his defence demoralized to that extent by the said Peeples, who really did know or ought to have known better; you' orator having, in his interrogatories, testified as he did from the information of the said Peeples, & with the honest belief at the time that it was true.

Orator further showeth that when the note & account in favor of S. Roosevelt, agent, against J. W. Buffington & Co., the one for 462.90 & the other for 642.14, was put in evidence as a payment for so much on these notes under the aforesaid agreement with Buffington & Co.,
20 said Peeples, testified in chief that they were paid in fact to Roosevelt by King, Crim & Co., but when asked on cross-examination how he knew that they were paid by King, Crim & Co. to Roosevelt, & whether he himself made the payment or saw it made, he hesitated, stammered, & only answered these questions on the stern & peremptory command of the court to do so; that they were paid by Mr. Crim, orator; that he did not see the payment made & only knew the facts from the statements of Crim & the entries on the books of King, Crim & Co., & as this was the only evidence on this subject, this large amount was rejected as a payment & the whole evidence of the said Peeples demoralized & destroyed before the court & jury; & that & all other evidence of payments testified to by said Peeples, such as the payment of 300$ to Mr. Wooten, 200$ to the sheriff, & which was rec'd by Wooten, were discredited by the jury, whereas the trouble was as to this payment as already stated. The notes of King, Crim & Co. were substituted by Peeples himself to Roosevelt & Co. on the 28th of March, 1866, in place of these two debts, & were subsequently paid as follows: By cash from R. F. Haviland on Oct. 16, '69, $212.54, which was handed to said Haviland for that purpose by Peeples, & subsequently by drafts of Wm. M. Peeples on S. Root, New York, one due 9th Nov., '69, for 300$, & the other due 9th Dec'r, '69, for 300$, and the balance of 240.77 to profit & loss, by which is meant, as orator is now informed, that so much was allowed to said Peeples for securing & collecting said amount of said debt of J. W. Buffington & Co., of which orator knew nothing until recently so informed. Now all this the said Peeples knew himself better by far than any other person, for it was all done by himself. The said Peeples since the disastrous result of said trial excuses himself to orator for the
21 manner, substance, & effect of his testimony at the time, by the statement that he was at that time & had been for some time laboring under a severe affliction of his bowels, & was at the time of his examination so greatly under the influence of opiates, taken to check and palliate his disease, that his mind was confused, & that his entire recollections deserted him, so much that he did not know to what he was testifying. However this may be the forgetfulness & confusion of the said Peeples, his manner of testifying in said cause on this subject operated as a complete surprise to your orator, which he did not & could not have anticipated, against which he could not have provided, and

the said Peeples is now ready, willing, & offers to swear to the facts as hereinbefore recited. At the time the said Peeples so testified he had in his possession the notes given by himself of King, Crim & Co. to Roosevelt & Co., & which are here now exhibited to this bill, in substitution & payment of the notes of J. W. Buffington & Co. as aforesaid, & hereto exhibited as aforesaid, with the evidence of their payment, all of which was unknown to your orator at the trial, & only became known afterwards from a search amongst said Peeples' papers & a correspondence by Peeples with Roosevelt, all of which can now & will be made clear & plain, if this honorable court will give him an opportunity so to do.

Orator further showeth that at the time the said Peeples had paid off & had control of the debt in favor of Haviland, Titus & Co. or J. W. Buffington & Co., for the said sum of $662.21, had the evidence thereof in his possession & which had been paid in pursuance of said decre, & the contract of E. B. Loyless & Co. with orator, as aforesaid, & which was & should have been allowed as a credit on said notes, but
22 your orator & his counsel was ignorant of such payment, & has only came to the knowledge thereof since said trial, but which said payment as well as that to Roosevelt & Co. as aforesaid, the payment of 300$ to Wooten, & the 200$ to the sheriff as aforesaid, & was well known to the said plaintiff & his said attorney at the said trial & the said knowledge thereof was by him fraudulently withheld from the court & from your orator & his counsel, but all of which can & will be most satisfactorily & clearly shown by proper proof on another trial, if the same shall be allowed by this court.

And your orator further showeth that as soon as the said suit was commenced by the said Handly as aforesaid against your orator, & his employment of counsel, & being advised by his counsel of the importance & absolute necessity for his successful defence of said suit of having before the court in the trial thereof a complete exemplification of the bill, & all proceedings had & taken therein in & by the superior court of Terrell, hereinbefore referred to, copy of which is hereto attached as Exhibit A, B, C, the said Peeples & your orator, as well as his counsel, applied to the clerk of the superior court of Terrell for such exemplification, but the said clerk, after repeated searches for such original papers in his office where they properly belonged, in which he was assisted by orator's counsel at different times, & which were continuous & repeated from early after the commencement of said suit in 1870 to within two or three days preceding the day set for the trial of said case, and the said clerk constantly failed to find them, to remember where they were, or in whose possession they were, or who had taken them from the office, nor could he or your orator, or his counsel find any record or evi-
dence whatever of said papers or proceedings. The said clerk
23 could not or did not ever find the record of the said verdict & decree therein, which was entered on the minutes, although your orator's counsel called on him for all entries in his said minutes pertaining to said cause or the proceedings in attachment, and he wholly failed to do so; he did furnish to your orator's counsel certified copies of certain entries in the said minutes in the attachment cause, but these were not certified to; the certificate was there without his signature. Your orator was thus unable to find said papers or the proper evidence thereof before said trial; he did not know where they were nor did his counsel, & he believes *that the* said Peeples; of the truth of all which he hereto appends as accompaniment to this his bill, the affidavits of his counsel & of the said Peeples and the said clerk on this subject. Your

orator, in consequence of this failure to procure these papers, was unable to procure & use on the said trial the said papers so important to his defence, & the proper & necessary understanding thereof by the court & jury on said trial, and as this search had been continued for so long a period of over two years without success or the hope thereof, orator could not ask a continuance of said cause for the want of said papers or their absence from the proper office or place of their custody by any statement that he expected to be able to find them afterwards, for he & his counsel believed in good that their loss or destruction was complete & total, with no hope of their being subsequently discovered.

Your orator further showeth unto your honor that within two days after said trial, & after the verdict was rendered against your orator as aforesaid, the said clerk of the said superior court *of the superior*
24 *court* of Terrell, the proper custodian of said papers, & to whom your orator & his said counsel had so often applied for said papers, found said original papers with the verdict & decree thereon, as set out in Exhibits A, B, C, lying on a shelf immediately before his place of writing in plain, open. & full view, where they must have been placed by some person within the week, & since his last search for them as aforesaid, for they could not have remained there longer than that time without his seeing them, as he himself said & stated; but of this, see said clerk's affidavit. Your orator shows that he was utterly ignorant of where the papers were all this time or how they got back into the office; but that they got back into the office surreptitiously is beyond all doubt. After the said clerk found said original papers as aforesaid, he was then able to find the entry of the verdict & decree rendered therein at the proper place & entered at the proper time, so as to make the same the judgment & decree of the court, & binding & conclusive on all the parties. The said clerk then recollected, as he stated to orator's counsel, how the papers got out of the office, & he says that they were taken out of the office with his consent early after said decree, by the said Council B. Wooton and the said James M. Handley for the purpose, as they then stated, of having a settlement of the matters therein involved with King, Crim & Co., or the said E. B. Loyless & Co., & had never been returned by them, or either of them, within his knowledge. Your orator further shows that during the aforesaid searches for said papers said Wooten was frequently called on for said papers as to their whereabouts, whether he had them or knew where they were; he constantly then as he does yet, denied all knowledge of them; that is, to where they were or
25 that he had them.

Your orator further sheweth unto your honor that he was totally misled & surprised by the conduct of the said Handley & his counsel in respect to the said suit & its said results, in this: the said Wooten, who had the exclusive control of said notes up to the bringing of said suit as aforesaid, or the attorney representing the persons interested therein, did not claim that there was anything whatsoever due on these notes beyond the said sum of between seven & eight hundred dollars which was in controversy between him & the said Peeples as aforesaid, & that he did not intend or expect to recover or demand anything further than said sum, whatever it might between the two extreme points as above stated of seven or eight hundred, & orator confidently believed from the acts and statements of said Wooten, repeatedly made, that that suit and claim of said plaintiff would be confined to that controversy & that amount. The said Wooten, well knowing & constantly admitting that all the balance of said notes had been paid off or were not due by King, Crim & Co., except said-sum, & so your orator says that

he was misled, deceived, & thrown off his guard thereby, when the said plaintiff & his counsel claimed on the trial the whole amount of said notes as due & unpaid, except what was actually credited on said notes of $221.68, & was less prepared with his defence in consequence thereof.

Orator was still further deluded, deceived, surprised, and damaged by the said conduct, declarations, & statements of the said plaintiff's said attorney, the said Council B. Wooten, in this regard: in that, at the time thereof, orator was secured & protected against all loss by the aforesaid obligation of E. B. Loyless & Co. to pay off these debts
26 & in consequence of these acts & statements orator gave up & parted with said securities to a very large extent, so much so that, if this verdict & judgment is allowed to stand & orator compelled to pay it, he will loose largely over & above the costs & expenses of this litigation, as he only retained enough of the securities to fully indemnify & cover what said Wooten had told him was due & what he claimed, & these securities belonged to E. B. Loyless, who was innocent as orator, & he is now insolvent, as is the said Peeples, & cannot either of them help orator to pay one cent beyond the security aforesaid. Since the trial thereof & the rendition thereof as aforesaid, the said Wooten has expressed the utmost astonishment thereat, & now says to orator & his counsel that the said verdict was & is a shameful outrage on the rights of orator, & that it ought not to be permitted, as there was nothing due on said debt except between seven & eight hundred dollars. Orator & his counsel have repeatedly appealed to the said Wooten to furnish him with an affidavit of this fact, to lay before your honors in aid of this application, but he refused to do so on the ground that, situated as he is in this matter, to give his affidavit voluntarily would be misconstrued by this client, the plaintiff, but that he will cheerfully give the information when called upon to do so by the order & direction of this honorable court.

Your orator further sheweth that he was further misled & thrown off his guard in the preparation for & trial of said cause by the said Wooten in this: he was an important witness for orator in the trial, as he personally knew of many, if not all, the payments made on said notes as aforesaid, by the said Peeples, & to save serving out interrogatories, taking his depositions, believing that he was obliged to be pres-
27 ent at the trial as the leading counsel in said cause, as Mr. Hines had at one time refused to go on with the trial, on account of his absence. One of orator's counsel, H. M. Harper & the said Wooten agreed some months before the trial *to* with each other, that said cause should not be tried except when both of them were present; they did this because they, on opposite sides, had conducted all the litigation in respect to these matters in the State court, which must have made important bearing on this trial, but when the said trial did come on the said Wooten was not present & did not come, although dispatched to by orator's counsel for that purpose, & Mr. Hines refused to recognize or carry out that agreement; had he been present the result must have been very different.

Your orator further shows that he does not know how the said James M. Handley became possessed of said notes, how he is interested in them, or what he paid for them or who let him have them, but he is advised, believes & so charges that his holding & bringing suit therein is illegal & in violation of the decree rendered in respect to these notes in Terrell superior court, as shown by the Exhibits thereof hereto attached marked Exhibit A, B, C.

Orator charges that the said verdict is illegal & void because it is in

violation of said decree, many of the questions, payments, & defences thereto having been adjudicated & settled by that decree which were repudiated & disregarded by the said plaintiff on the said trial.

Your orator further shows that the order of C. B. Wooten in favor of said James M. Handley on William M. Peeples was paid, & was paid as a payment on these notes & so intended & received by said
28 Handley & it was repudiated & rejected in the finding of the jury for the same reason—the demoralization of the testimony of the said Peeples all of which was well known to said Handley, he being present & fraudulently & dishonestly withholding or suppressing the information, so as to let orator have the benefit of same—that much as a payment which he well knew had been made on these notes.

Orator further sheweth & charges that the whole proceedings resulting in the verdict aforesaid under the circumstances & facts aforesaid was a gross fraud on the court in which the verdict was obtained & on the rights of your orator.

Your orator further sheweth that, if the payments have in fact been made as are hereinbefore set out, which orator believes has been paid & the evidence of each payment being conclusive to orator's mind, the whole of said debt of principal & interest has in fact been fully paid off. If it has not in fact, & it shall so appear in the answer & showing in response hereto of the said Wooten & Handley, your orator stands ready & willing, as he is able & here now offers, to pay off at once whatever balance shall appear thereby to be due independently of the answer of said Peeples, who has been heard, if your honor on consideration shall so require.

Your orator further sheweth that said James M. Handley has caused execution to be issued from said verdict & judgment for the whole amount thereof & placed in the hands of said William H. Smythe, marshal as aforesaid, who has levied the same on the property of
29 your orator in the town of Dawson, of sufficient value, the same being real estate in said town of Dawson & county of Sumter, to pay off the whole of said judgment-execution, principal, interest, & cost, & which will be advertised for sale on the first Tuesday in September unless he be restrained by the order of your honor in the premises.

To the end, therefore, that the said defendants may, if they can show why your orator should not have the relief hereby prayed, & may, upon their several & respective corporal oaths, & according to the best & utmost of their several & respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter mentioned & set forth as by the note hereunder within they are respectively required to answer, that is to say:

1. Whether suit was not brought on one of said four notes, the subject-matter of this suit at law, due the first of April, 1866, in the name of J.W. Buffington & Co., to the May term, 1866, of Terrell superior court, against King, Crim & Co., & whether that suit was ever disposed of & how?

2. Whether all of said notes were not placed, by J. W. Buffington & Co., after they were made & delivered to them by King, Crim & Co., in the hands of Harrison Rogers, as their agent, & whether said Rogers was not instructed to take all debts against J. W. Buffington & Co. that should be taken up by King, Crim & Co., or William M. Peeples? & whether said Rogers, as such agent, did not place said notes in the hands of H. M. Harper, as the atto. of J. W. Buffington & Co., for collection?

3. Whether King, Crim & Co. did not pay off, as a debt of
30 J. W. Buffington & Co., a debt or order to J. W. Edwards for $232.50.

4. Whether they did not also take up, by payment, the note & account in favor of S. Roosevelt, agent, against J. W. Buffington & Co., for the gross sum of $1,053.31?

5. Whether King, Crim & Co., by William M. Peeples, did not file their bill in equity, returnable to the May term, 1866, of Terrell superior court, against J. W. Buffington & Co. & Harrison Rogers, setting up the claim of Edwards & Roosevelt, as paid off by them, as payments on these notes of King, Crim & Co., & whether these were not adjudged & decreed, on the final hearing of said bill, as payments to their respective amounts on said notes?

Whether said bill was not amended at the November term of Terrell superior court, setting up as a still further credit on said note the note or due-bill in favor of B. F. King for $432.50? Whether this not adjudged a payment to that amount on these notes? And whether said amended bill did not also set out & specify the debts in favor of Haviland, Titus & Co., Longstreet, Sedgwick & Co., of Tracy, Irwin & Co., & Pardee, Bates & Co., all against J. W. Buffington & Co., as debts proper to be taken into account in a final settlement of said notes.

7. Whether a final & consent decree was not taken at the November term, 1866, adjudging & decree' payments on said notes to the extent, &c., & what was the extent of that decree? Whether Exhibits A, B, C, are not copies of said bill, amended bill, verdict & decree, & of the action of that court in respect to certain summons of garnishment, &c.

31 8. Whether, after said decree, said Harrison Rogers did not, under that decree & in accordance, turn over said notes to Council B. Wooten & his partner to carry out said decree, & in respect whether he did not also turn over other notes & assets of J. W. Buffington & Co., that were in his hands to collect, & apply the proceeds to the payment of the debts J. W. Buffington & Co., & whether said Wooten did not receive these notes, & all other notes & assets, from Harrison Rogers, as the attorneys holding & controlling said claims of the creditors of J. W. Buffington & Co.? Whether said Rogers did not also turn over the receipt of William M. Peeples to J. W. Buffington & Co., for sundry claims belonging to J. W. Buffington & Co.? What claims or debts were specified in that receipt? Where is that receipt, & append a copy of that receipt to the answers hereto? What became of said claims? Were they not turned over by Peeples to said attorney, Council B. Wooten? What became of those claims? How much money was received on them & what was done with that money? Were they claimed not sufficient in amount to pay off all of said debts against J. W. Buffington & Co., other than those paid off by Peeples or E. B. Loyless & Co., or King, Crim & Co.?

9. Whether the said creditors did not enter into an agreement with said Peeples to collect & recover their debts on J. W. Buffington & Co. out of those notes & other assets of said debtors in the hands of Rogers & Peeples? Whether the said debts were not put in the hands Peeples for that purpose, & whether he did not turn over the whole to
32 Wooten, as the atto. of these creditors, & what compensation was Peeples to receive? Whether it was not in furtherance of this object that the bill was filed by King, Crim & Co.? Whether Peeples did not direct, control that bill? 9. Whether the creditors did not sue out attachments, & garnishee King, Crim & Co. & E. B. Loyless & Co.?

Whether they did not answer that, after deducting cotton-seed payments on said notes, the balance due on these notes was 1,885? Whether the answer of the latter firm did not relate alone to the indebtedness of King, Crim & Co., on these notes, they, in their answer, accepting & treating it as their debt, & was not that amount, at the Nov'r term, 1867, with interest on same from June, 1866, & whether that sum was not, at that time, the recognized & admitted balance due on these notes of King, Crim & Co., or by Loyless & Co., for them? Was not judgment taken at that time by these attaching creditors against E. B. Loyless & Co. for this sum, with interest for this amount, & was not that intended to, & did, actually cover the whole balance that was then claimed to be due on these notes? Whether judgment was taken against King, Crim & Co. & why not? & is not Exhibit a copy of that judgment?

10. Whether, after this judgment was so taken, Peeples, one of the defendants then, did not pay on the order of C. B. Wooten to Handley for Longstreet, Sedgwick & Co., 784$, & was this amount not in payment of so much of said judgment against E. B. Loyless & Co., garnishees, & a credit on those notes to that amount. Whether Handley & Wooten, both, did not know this on the trial; whether Handley
33 was not present in court on the trial of the case in law when this order & payment was offered in evidence as a part payment on this debt, & whether he did not falsely & fraudulently suppress & withhold the truth on that occasion, & by his counsel insist that it was not a payment & not evidence, when he knew that it was?

11. Whether Peeples did not also as a still further credit & in extinguishment of these notes to that amount, all pay off & take control of the claim of Haviland, Titus & Co., for $662.

12. Whether he did not pay H. M. Harper 225$, as his fees, to be credited on these notes & as a part payment; & to C. B. Wooten, 300$, also to be credited as a part payment of their debt; and whether he did not also pay to the sheriff of Terrell County, 200$, on the fi. fa. that issued from the judgment against E. B. Loyless & Co., for garnishees, & for the balance of this debt, as the whole balance thereon that he admitted to be due, & was that amount paid over by the said sheriff to said Wooten; & did not said Peeples file then affidavit of illegality to said execution on the ground of its payment; and was not said execution with said illegality returned to the court for trial; & was not said execution set aside by said court on the grounds that there was no judgment against the principal debtors as a proper & necessary basis for judgment against garnishees?

13. Whether, when the suit was commenced in the U. S. court at Savannah, at instance of Handley, against King, Crim & Co. on these notes, the whole sum claimed to be due on said notes, over &
34 above all payments made & deductions allowed was only between seven & eight hundred dollars? What was the exact amount? & furnish statements of how such balance was arrived at.

14. Whether the Boyd & Wilson note of 4,188$, given by King, Crim & Co. to J. W. Buffington & Co. in part payment of goods, was not left by them in the hands of Peeples & of Rogers, & whether that note was not turned over to Wooten, or Wooten & Hoyl, or to whom? Whether the whole amount has not been collected, & by whom, & what was done with the proceeds?

15. Whether said Wooten did not agree with H. M. Harper, one of orator's counsel, that the case of Handley vs. King, Crim & Co. should not be tried in the absence of either, so that both could be present and give all personal & proper explanation & evidence on the trial that

might be necessary, & whether they did not shake hands on it, & whether said Wooten did not absent himself from said court at said trial, or was absent, & did not Handley & his counsel, present at said trial, repudiate that agreement, & force the case to trial notwithstanding such agreement was insisted on by counsel for orator?

16. Whether said Handley, in the prosecution of said suit, is not the mere agent of some other person, & what person, & what interest he represents? Whether he be the true holder of these notes, & from whom he obtained them, on what terms, & at what price, & all the circumstances connected therewith. And most especially that the said

35 James M. Handley, Council B. Wooten, may in like manner answer all matters & things in said bill hereinbefore or hereinafter set forth & contained as fully & particularly as if the same was here again repeated, & they & each of them especially interrogated thereto.

Orator further shows that, from inadvertence of his counsel the following statement was omitted in & at the proper place, which he desires to hear state with the same effect as if inserted ahead of the interrogatory part of said ; that it was not until after the trial of the case at law, & then merely by accident, that he discovered that Harrison Rogers held the receipt of the said Council B. Wooten & L. C. Hoyl, for the notes aforesaid, being Exhibit ; had he known the fact or suspected it, he would have compelled its production on the said trial, & it would greatly have benefitted him & the said court by furnishing information, & a light which orator sees his counsel could obtain from no other source & serving to illustrate this whole litigation.

In tender consideration whereof & forasmuch as your orator is remediless at & by the strict rules of common law, may it please your honors to grant unto your orator a new trial, that the whole of these matters which have not been heard may be heard, considered, & justice done; & to this end & in the mean time may it please your honor to grant unto your orator the United States most gracious writ of injunction, to be directed to the said James M. Handley, Council B. Wooten, his attorney,

& William H. Smyth, the United States marshal for the State of

36 Georgia, commanding, restraining, and enjoining them & each of them, under certain penalties therein to be named by your honor, from further prosecuting the aforesaid levy on said execution, from advertising or selling the said property, or otherwise attempting to collect the amount apparently due until the further order & direction of this honorable court in the premises.

And may it please your honors to grant unto your orators the United States most gracious writ of subpœna, to be directed to the said James M. Handley, the said Council B. Wooten, & all others the agents or attorneys of the said James M. Handley & the said William M. Peeples, at a certain day, & under a certain penalty therein to be named, to appear before your honors, & then & there, after answering said bill as herein prayed, to stand to, abide by, & perform the decree of this honorable court in the premises, & may it please your honors to grant unto your orator such other & further relief as to your honors shall seem meet & proper; & your orator will ever pray, &c.

LYON & IRWIN,
H. M. HARPER,
Compl'ts Sol'

37 GEORGIA, *Bibb County:*

You, John B. Crim, do swear that the facts set forth & contained

Whether they did not answer that, after deducting cotton-seed payments on said notes, the balance due on these notes was 1,885? Whether the answer of the latter firm did not relate alone to the indebtedness of King, Crim & Co., on these notes, they, in their answer, accepting & treating it as their debt, & was not that amount, at the Nov'r term, 1867, with interest on same from June, 1866, & whether that sum was not, at that time, the recognized & admitted balance due on these notes of King, Crim & Co., or by Loyless & Co., for them? Was not judgment taken at that time by these attaching creditors against E. B. Loyless & Co. for this sum, with interest for this amount, & was not that intended to, & did, actually cover the whole balance that was then claimed to be due on these notes? Whether judgment was taken against King, Crim & Co. & why not? & is not Exhibit a copy of that judgment?

10. Whether, after this judgment was so taken, Peeples, one of the defendants then, did not pay on the order of C. B. Wooten to Handley for Longstreet, Sedgwick & Co., 784$, & was this amount not in payment of so much of said judgment against E. B. Loyless & Co., garnishees, & a credit on those notes to that amount. Whether Handley & Wooten, both, did not know this on the trial; whether Handley
33 was not present in court on the trial of the case in law when this order & payment was offered in evidence as a part payment on this debt, & whether he did not falsely & fraudulently suppress & withhold the truth on that occasion, & by his counsel insist that it was not a payment & not evidence, when he knew that it was?

11. Whether Peeples did not also as a still further credit & in extinguishment of these notes to that amount, all pay off & take control of the claim of Haviland, Titus & Co., for $662.

12. Whether he did not pay H. M. Harper 225$, as his fees, to be credited on these notes & as a part payment; & to C. B. Wooten, 300$, also to be credited as a part payment of their debt; and whether he did not also pay to the sheriff of Terrell County, 200$, on the fi. fa. that issued from the judgment against E. B. Loyless & Co., for garnishees, & for the balance of this debt, as the whole balance thereon that he admitted to be due, & was that amount paid over by the said sheriff to said Wooten; & did not said Peeples file then affidavit of illegality to said execution on the ground of its payment; and was not said execution with said illegality returned to the court for trial; & was not said execution set aside by said court on the grounds that there was no judgment against the principal debtors as a proper & necessary basis for judgment against garnishees?

13. Whether, when the suit was commenced in the U. S. court at Savannah, at instance of Handley, against King, Crim & Co. on these notes, the whole sum claimed to be due on said notes, over &
34 above all payments made & deductions allowed was only between seven & eight hundred dollars? What was the exact amount? & furnish statements of how such balance was arrived at.

14. Whether the Boyd & Wilson note of 4,188$, given by King, Crim & Co. to J. W. Buffington & Co. in part payment of goods, was not left by them in the hands of Peeples & of Rogers, & whether that note was not turned over to Wooten, or Wooten & Hoyl, or to whom? Whether the whole amount has not been collected, & by whom, & what was done with the proceeds?

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LYON & IRWIN,
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LYON & IRWIN,
H. M. HARPER,
Compl'ts Sol'

37 GEORGIA, *Bibb County:*

You, John B. Crim, do swear that the facts set forth & contained

in this your foregoing bill, so far as they depend on your own knowledge, are true, & so far as they depend on the knowledge or information derived from others, you believe them to be true.

J. B. CRIM.

Sworn to & subscribed before me this 14th day of July, 1873.
N. SELLEN HILL,
U. S. Comm. for the Southern District, Geo.

38 PROCEEDINGS IN STATE COURT.

Bill of complaint.

GEORGIA, *Terrill County:*

To the honorable John T. Clarke, judge of the superior courts of the Pataula circuit, holding chancery jurisdiction:

Hereby complaining, your orators, Benjamin F. King, John B. Crim, John G. Trammell, and William M. Peeples, all citizens of the county and State aforesaid, & merchants and partners using the firm-name and style of King, Crim & Co., show unto your honor that heretofore, to wit, on the day of , 1866, they purchased of John W. Buffington, John P. Stafford, Ozial A. Howe, Hiram C. Brown, and William M. Peeples, all, except the last named, citizens of the State of New York, & merchants and partners, then and for some time previous thereto selling dry-goods in the town of Dawson under the firm-name and style of J. W. Buffington & Co., their entire stock of goods in said town. Orators paid J. W. Buffington & Co. a part of the purchase-money in cash, and for the balance they made and delivered to them their four promissory notes for $1,147.91 each, due the first days of April, May,
39 June, & July. Orators further show that, during the progress of the business of said J. W. Buffington & Co., the house from time to time made remittances to them, John W. Buffington, who remained in New York, sufficient to meet at maturity any debts against the firm, and at the time of the purchase of said stock of goods by your orators it was understood that all the liabilities against their predecessors were discharged, and that their copartner, William M. Peeples, entered into business with them wholly unembarrassed by any debts, against the firm of J. W. Buffington & Co.; all such were believed by your orators to have been paid off and settled. Nor was anything known to the contrary until recently, when your orators ascertained to their astonishment that there is in New York a large amount of indebtedness against the firm of J. W. Buffington & Co., and that the money which was remitted to said John W. Buffington & Co. to pay off said indebtedness was never used by him for that purpose.

And orators further show that when they bought said stock of goods your orator, William M. Peeples, was desirous to fortify himself against any untoward contingencies that might arise on account of his connection with the preceding firm, & the others of your orators sympathised with him in that desire since said Peeples was the leading business man of their firm, & they recognized the importance to themselves of keeping his credit intact, and hence it was proposed and agreed by and between your orators of the one part and the said J. W. Buffington & Co., of the other part, that notes given by your orators to said J. W. Buffington & Co., as aforesaid, should be deposited
40 with one Harrison Rogers, of Terrell County, Georgia, who should

hold the same simply as agent: & that if any debts should come against the firm of J. W. Buffington & Co. your orators should pay off said debts, and that the same should be received as so much in payment of the notes which were placed in the hands of said Rogers.

Orators allege further that, since the existence of the indebtedness aforesaid has been ascertained, they have commenced to pay it off in pursuance of the understanding aforesaid, and as an act of justice & protection to their copartner, William M. Peeples, who had done all in his power to provide for the payment of said debts, & had reason to suppose that the same were fully settled. Orators have paid Samuel Roosevelt, of New York, a note and an account against the said J. W. Buffington & Co. amounting, in the aggregate, to $1,045.04, all of which more fully appears by reference to copies of said note & account hereto attached & marked "Exhibit A," which orators pray may be considered a part of this bill, with leave to use the same as often as occasion may require. Orators also paid to J. W. Edwards the sum 132½ dollars, which was due from the said J. W. Buffington, thus making, in the aggregate, the sum of 1,207.54 dollars so paid by your orators. Orators made these payments in the utmost good faith, knowing that they were due & owing by said J. W. Buffington & Co., that they came within the perview of the understanding aforesaid, & that it was just & right
41 that the assets of the firm of J. W. Buffington & Co. should go to pay the debts of that firm.

Orators called on the said Harrison Rogers with a view to pay their note, which matured on the first day of April, 1866. They adduced the claims which had been paid off by them as aforesaid, & offered to pay the balance, whatever it might be, if any there were, in money. The said Rogers refused to settle on these terms, pretending that he did not have such authority, although your orators charge that he took said notes with the instructions that all claims against J. W. Buffington & Co. were to be received in payment thereof. Orators reminded him of these instructions, which he did not deny, but claimed to have lately received different instructions from said Ozeal A. Howe or some other member of the firm. Orators have recently ascertained, but they aver and so charge, that the said John W. Buffington and the other members of his said firm, except said William M. Peeples, from whom they concealed their fraudulent designs by combination and complicity amongst themselves, applied the remittances made to said Buffington for the payment of the firm debts as aforesaid to their own uses, and left said debts unpaid, and that they are now seeking by secret instructions to said Harrison Rogers, who, orators charge, is a willing instrument of fraud in their hands, to avoid the payment of said firm debts, and to secure the money on the notes held by said Rogers for their own purposes, thus leaving the burden of the indebtedness of said firm to fall upon and overwhelm your orator, William M. Peeples, and thereby blasting
42 the credit of the principal business-man of the firm of your orators.

Orators further show that said John W. Buffington, John P. Stafford, Ozeal A. Howe, and Hiram C. Brown, are insolvent and unable to respond to your orators for the debts they have paid off as aforesaid, unless said debts be received in payment of your orators' said notes.

And orators show further that there are in New York debts against said firm still unpaid to the amount of (10,000) ten thousand dollars or thereabouts, which said debts will be left to come against your orator, William M. Peeples, alone, unless the same be paid out of the assets of said firm. Orators submit that it is just and equitable that the effects

belonging to the late firm of J. W. Buffington should go to pay the debts of that firm. Such was the understanding when orators negotiated with said firm for their stock of goods, and such were the instructions with which said notes were placed in the hands of said Harrison Rogers, and orators had hoped that such understanding & instructions would have been carried out in good faith, as in justice and good conscience it ought to have been, nor did they think of anything to the contrary until lately, when the said Harrison Rogers refused to settle by receiving "pro tanto" the debts against said J. W. Buffington, & which your orator had paid off. And so it is, may it please your honor, that the said John W. Buffington, and the other members of said firm in New York, are endeavoring to get possession of the effects of said firm and to apply the
43 same to their own purposes, leaving the debts of the firm to be paid by your orator, William M. Peeples, and placing your orators without recourse or remedy as to the debts which they have bona fide paid as aforesaid. And the said Harrison Rogers, combining and confederating with them to injure and defraud your orators, refuses to accept said claims so paid off by your orators as aforesaid in payment as far as they go of the due note which he holds against your orators, as agent for said J. W. Buffington & Co., although he well knows that such was the understanding and such were his instructions. On the contrary, he has, since the tender was made, in order to vex and harase your orators, and to injure if possible their credit as merchants, had suit instituted on the note due the first day of April, in favor of said J. W. Buffington & Co., against your orators, which suit is now pending in Terrell superior court. And orators have reason to apprehend, and they charge it to be the intention of said John W. Buffington & the other members of the firm in New York, as soon as they find that orators will not settle except upon fair and just terms, that they will take said notes out of the hands of said Harrison Rogers and transfer them to innocent parties & thereby leave your orators without redress; all of which is contrary to equity & good conscience, & tends to the wrong, injury, and oppression of your orators. And since your orators are without remedy at law & can have adequate relief in a court of equity alone, your orators specially waiving discovery, pray your honor to grant them the
44 State writ of subpœna, requiring & commanding the said Harrison Rogers, of the county of Terrell, State of Georgia, & the said John W. Buffington, and John P. Stafford, and Ozeal A. Howe, and Hiram C. Brown, of the State of New York, to be and appear at the next superior court to be held in & for said county, on the fourth Monday in May next, then and there to answer the premises. And to the end that the understanding and agreement aforesaid may be carried out, that justice may be done in the premises, that the assets of the firm of J. W. Buffington & Co may be applied to the debts of the firm, & that your orators may be saved harmless, may it please your honor to grant unto your orators the State's most gracious writ of injunction, to be issued out of the honorable court, under a proper penalty to be therein mentioned, directed to said Harrison Rogers, John W. Buffington, John P. Stafford, Ozeal A. Howe, & Hiram C. Brown, enjoining and commanding them, their agents, attornies, and confederates, not to transfer, trade, or alien, nor in anywise to interfere with the four promissory notes aforementioned, now in the hands of said Harrison Rogers, given by your orators (signed King, Crim & Co.) to J. W. Buffington & Co., for $1,147.91 each, and due the first of April, May, June, & July, and that the said defendants, nor any of them, shall not proceed to collect said notes, nor in anywise to enforce payment thereof, and that the suit,

the same being an action of complaint in favor of said J. W. Buffington & Co., against your orators as aforesaid, on the note due the first
45 day of April, 1866, to the May term, 1866, of Terrell superior court, and now pending in said court, shall be enjoined until the further order of this court.

And orators pray a decree of this honorable court to the effect that the debts aforesaid which orators have paid off against said J. W. Buffington & Co. shall be received "pro tanto" in payment of said claims now held by said Harrison Rogers on your orators, and that said claims shall be reduced by any other debts that may be due & owing by the late firm of J. W. Buffington & Co., if your honor thinks best. Orators would suggest that a decree be rendered requiring said Harrison Rogers, subject to the order of this court, to take charge of whatever amount of money may be decreed to be paid by your orators on said notes whenever the same shall come into his hands, and that he pay therewith any debts that may be against said firm of J. W. Buffington & Co. & that he pay over the balance, whatever it may be, if any there be in excess of said debts, to said Buffington, Stafford, Howe, & Brown. And orators pray your honor to grant such other decree in the premises as may be in accordance with equity and good conscience, &c.

WOOTEN & HOYL,
Complts. Solicitors.

46 GEORGIA, *Terrell County:*

William M. Peeples, of the firm of King, Crim & Co., come before the undersigned, and, on oath, says that the facts, statements, and allegations contained in the foregoing bill, so far as they depend upon his own knowledge, are true, and so far as they depend upon information derived from others he believes them to be true.

W. M. PEEPLES.

Sworn to and subscribed before me this 14th April, 1866.
J. B. PERRY, *J. P.*

47 EXHIBIT A.

Statement.

NEW YORK, *March 31st*, 1866.

Messrs. J. W. Buffington & Co. in account with Samuel Roosevelt, agt., Dr.

1865.			Months.	Days.	Interest.
Nov. 13. To merchand'se, *for* bill....	560 18	.....	49	5 26
" 23. " " " "	23 59	.....	39	.....
" " " " " "	52 54	.....	.....	57
	636 31	.....	.....	5 83
Int. to May, 1866 ...	5 83			
	$642 14			

For and in consideration of the above amount to me paid, I hereby assign to King, Crim & Co. the above a/c.

SAML. ROOSEVELT, *Agt.*

$402.90.] NEW YORK, *Sept. 11th*, 1865.

Four months after date we, the subscribers, of Dawson County, of State of Georgia, promise to pay to the order of Saml. Roosevelt, agt., four hundred and two $\frac{90}{100}$ dollars, at No. 7 Barclay st.

Value received.

J. W. BUFFINGTON & CO.

No. . Due Jan. 7| 14, '66.

Received payment from money .

KING, CRIM & CO.
SAMUEL BOOSEVELT, *Agt.*

48 *Injunction.*

STATE OF GEORGIA,
Terrell County:

To Harrison Rogers, John W. Buffington, John P. Stafford, Ozeal A. Howe, & Hiram C. Brown, their confederates, servants, and agents:

Whereas Benjamin F. King, John B. Crim, John G. Trammell, and William M. Peeples, their bill of complaint against you, returnable to the May term, (1866,) eighteen hundred and sixty-six, of the superior court of said county, showing that since your orators are without remedy at law, & can have adequate relief in a court of equity alone, your orators, specially waiving discovery, pray your honor to grant them the State's writ of subpœna, requiring and commanding the said Harrison Rogers, of Terrell County, & State of Georgia, & the said John W. Buffington, and John P. Stafford, and Ozeal A. Howe, and Hiram C. Brown, of the State of New York, to be and appear at the next superior court to be held in and for said county, on the fourth Monday in May next, *then and the* end that the understanding and agreement aforesaid may be carried out, that justice may be done in the premises, that the assets of the firm of J. W. Buffington & Co. may be applied to the debts of the firm, & that your orators may be saved harmless.

And whereas the said Benjamin F. King, John B. Crim, John
49 G. Trammell, and William M. Peeples by their said bill pray the issuing of the State's writ of injunction to be forth issued to stay & said Harrison Rogers, John W. Buffington, John P. Stafford, Ozeal A. Howe, & Hiram C. Brown, enjoining and commanding their agents, attorneys, & confederates not to trade, transfer, or alien, nor in anywise to interfere with the four promissory notes aforementioned and now in the hands of said Harrison Rogers, given by your orators (signed King, Crim & Co.) to J. W. Buffington & Co., for $1,147.91 each, and due the 1st April, May, June, and July, and that the said defendants, nor any of them, shall not proceed collect said notes, nor in anywise to enforce payment thereof; and that the suit, the same being an action of complaint in favor of said J. W. Buffington & Co. against your orators aforesaid on the note due the first day of April, 1866, to the May term, 1866, of Terrell superior court, and now pending in said court, be enjoined until the further order of this court. And the said William M. Peeples, one of the firm of King, Crim & Co., having verified the facts and statements of said bill on oath, and said bill having been read and sanctioned by the judge of said court, therefore you, the said Harrison Rogers, J. W. Buffington, J. P. Stafford, O. A. Howe, & H. C. Brown, and all and every the persons beforementioned, are hereby com-

manded and strictly enjoined that you and every of you do from henceforth altogether and absolutely desist from disposing of the assets belonging to said J. W. Buffington & Co. of any value, unless by
50 order of the honorable superior court.

To the sheriff of the county of Terrell:

You are hereby commanded to give notice hereof to the said Harrison Rogers, and all the persons before mentioned, by leaving a true and attested copy of the foregoing writ with said Harrison Rogers and other persons above mentioned, and by requiring the said Harrison Rogers and other persons each to enter into bond, payable to said Benjamin F. King, John B. Crim, John G. Trammell, & William M. Peeples, with good security, in the sum of ten thousand dollars, to observe and abide by the conditions and requirements of the foregoing order. Fail not, &c.; and make return of this writ to the superior court, on the fourth Monday in May next.

Witness the honorable John T. Clark, judge of said court, this 16th day of May, 1866.

H. F. CLARK, *Clerk.*

51 *Amended bill.*

GEORGIA,
Terrell County:

To the honorable John T. Clark, judge of the superior court of the Pataula circuit, holding chancery jurisdiction:

Humbly complaining, your orators, Benjamin F. King, John B. Crim, John G. Trammell, and William M. Peeples, would represent & show unto your honor that heretofore, to wit, on the 16th day of April, they filed in the superior court of said county their original bill, against Harrison Rogers, John W. Buffington, John P. Stafford, Ozeal A. Howe, and Hiram C. Brown, charging, among other things, that your orator, William M. Peeples, while a copartner in the mercantile business with the firm of J. W. Buffington & Co., in the town of Dawson, in said county & State, had contracted a considerable indebtedness north, in carrying on the business of said firm of which the said William M. Peeples was a partner as aforesaid, a portion of which indebtedness he had paid off with means belonging to the more recent firm of King, Crim & Co., of which he, the said Peeples, was also a partner, he with his cocomplainants having by purchase become the successors in business of the firm of J. W. Buffington & Co., and that in making said
52 purchase it was understood & agreed that the several notes executed to the firm of J. W. Buffington & Co. by your orators should be deposited with defendant Rogers, who should hold the same merely as agent of the parties, and that the proceeds thereof, when collected, should be appropriated to the payment of any indebtedness which might come against the firm of J. W. Buffington & Co., and that the same should be received as so much in payment of notes which were placed in the hands of the said Rogers as aforesaid; and further charging in said bill that defendant Rogers was not acting in good faith as an agent of the parties, & that they were apprehensive that he would defeat the appropriation of the proceeds of said notes so placed in his hands, as it was intended & understood they should be appropriated by transferring them or otherwise, and his codefendants being insolvent and non-residents of the State of Georgia, an injunction was prayed and

granted for the purposes stated in said bill, and now since the filing of the same other indebtedness has come against the firm of J. W. Buffington & Co., and is under the control of your orator Peeples, who is mainly looked to for the payment of the same, the parties relying upon him as the leading member of the firm. In consideration whereof he is advised that *is it* material for them to so amend said original bill as to include said indebtedness, although some of the claims so under his control have been proceeded in by attachment suits in law against the non-resident members of said firm. And now, by leave of the court for that purpose first had and obtained, your orators bring here into their
53 supplemental bill, showing & exhibiting the character & amounts of said indebtedness by attaching hereunto a correct statement, marked "Exhibit B," and pray that the same may be regarded & treated as a part of their said original bill, adopting as their prayer to this their of the same, the prayer made to said original bill with the further prayer that the indebtedness shown in Exhibit B, hereto appended, may be regarded as an amendment of Exhibit A to said original bill, & settled in the same way. And as in duty bound will ever pray, &c.

WOOTEN & HOYL,
Solicitors for Complt.

STATE OF GEORGIA,
Terrell County:

Personally came before me, an acting justice of the peace in and for said county, William M. Peeples, one of the complainants in the foregoing amended bill, and made oath in due form of law that the statements therein as of own knowledge or was concerning his own acts and deeds, are true, and those made upon information of others, concerning the acts and deeds of others, he believes to be true.

W. M. PEEPLES.

Sworn to and subscribed before me this the 29th day of November, 1866.

W. F. ORR, *J. P.*

(Endorsed:) Terrell supr. ct., Nov. term, 1866. King, Crim &
54 Co. vs. Harrison Rogers, John W. Buffington, Ozial A. Howe, Hiram C. Brown, John P. Stafford. Amended bill. Filed in office this 29th Nov. 1866. H. F. Clark. Wooten & Hoyl.

Verdict.

KING, CRIM & CO. *vs.* HARRISON ROGERS, JOHN W. BUFFINGTON, John P. Spofford, Ozial A. Howe, and Hiram C. Brown.	Bill for relief and injunction in Terrell superior court.

Be it remembered that this cause came on for hearing before the honorable John T. Clark, judge, &c., *on hearing* this the 30th day of November, 1866, upon the original bill & exhibits thereto, & the amendment thereunto, & exhibit to said amendment attached, whereupon solicitors learned in the law, both for complainants & defendants, appeared in open court & representing the right & interest of the parties in said suit mentioned, & consented that the facts and charges as stated

and charged in said original and amended bill, with the exhibits to each attached, be adjudged as true & taken as confessed, & further consent and agree that the set-off as prayed in said bill be allowed and adjudged as such, which is accordingly done; & it further appearing that the counsel in said case agree that the defendant Rogers be allowed to proceed with the collection of the notes placed in his hands by his confederates against complainants, with the proviso that in making said
55 collections he allows and receives in part or entire payment of said notes the set-off prayed in said bill, together with any indebtedness the complainants may have paid off for his codefendants as charged; and with the further proviso that he take and receive in payment of the notes placed in his hands as aforesaid, any other notes & a/c's offered and set up in said bill, amendment, & exhibits to each, and that the injunction granted in the case as to him to that extent be dissolved & be ordered to proceed in the collection of said debts, in accordance with the aforesaid proviso, & in so doing, should any money come into his hands, he will report the same to the next term of this court, & will pay the same into court for order of the court, & that he make to the next term of said court a full report under oath of his acts and doings in the premises; whereupon the court is pleased to so order & adjudge & does so order & adjudge.

(We, the jury, find the above and foregoing decree as our verdict.)

S. R. WESTON, *Foreman.*

(Endorsed:) King, Crim & Co. vs. H. Rogers, J. W. Buffington, J. P. Spofford, O. A. Howe, H. C. Brown. Page 637.

56 *Decree on verdict.*

Terrell superior court, November term, 1866.

KING, CRIM & CO.
vs.
HARRISON ROGERS, JOHN W. BUFFINGTON, John P. Spofford, Ozeal A. Howe, & Hiram C. Brown. } Bill for relief and injunction.

The jury having returned into court a verdict sustaining as true the facts and charges made in said original and amended bill, & granting the prayer as prayed by complainants in said bill & amendment thereto, allowing and sustaining the indebtedness & set off as presented by complainants & dissolving the injunction to the extent stated in the verdict, it is therefore ordered & adjudged by the court that the verdict of the jury so returned be made the judgment of the court; that the facts stated in said bill & the amendment thereof be adjudged true, the set-off therein pleaded & the indebtedness charged & exhibited in said bill, and amended bill, & the exhibits to each, be adjudged against the parties thereto, and that the injunction granted as to defendant Rogers be dissolved to the extent named in the verdict of the jury & be allowed and directed to proceed to collect the notes in his hands, & that in doing so, he will take up the indebtedness as presented in said bill, amended bill, & exhibits, together with the set-off presented by complainants, so that all of the claims so presented may be taken up by the claims
57 in his hands, & he is further ordered to make a full report of what may be done by him to the next term of the court.

And the verdict of the jury so made is hereby made in all things the judgment of the court.

Judgment signed 5th December, 1866.

WOOTEN & HOYL,
Complainants' Attorneys.

Order for subpœna and injunction.

In chambers at Lumpkin, Stewart County, Georgia, April 14th, 1866.

Read and sanctioned. Let the State writ of subpœna and injunction issue, each in the penalty of ten thousand dollars; the complainants as a condition-precedent to such injunction filing with the clerk of the superior court of Terrell County, Georgia, a bond, with security by said clerk approved, in the sum of three thousand dollars, conditioned to indemnify defendants against legal injury from such injunction for payment of costs, if lost in this suit, and let the usual proceedings in equity be had herein.

Witness my official signature.

JOHN T. CLARK, *J. S. C. P. C.*

58 (Endorsed:) No. 5. In equity. Terrell superior court. May term, 1866. King, Crim & Co. vs. Harrison Rogers, John W. Buffington, John P. Spofford, Ozeal A. Howe, & Hiram C. Brown. Bill for relief and injunction. Filed in office 16th April, 1866. H. F. Clark, clerk. Wooten & Hoyl.

Sheriff's return of service.

I have served the defendant, Harrison Rogers, personally with a copy of the within bill in person.

April 16th, 1866.

M. W. KENNEDY, *Sheriff.*

[Stamped.]

59 PART OF EXHIBIT A, B, C.

Copy of original note and account of J. W. Buffington & Co. to S. Roosevelt

$402.90.] NEW YORK, *Sept. 11th*, 1865.

Four months after date we, the subscribers of Dawson, county of , State of Geo., promise to pay to the order Sam'l Roosevelt, agent, four hundred & two ^{90} dollars, at No. 7. Barclay st. Value received.

J. W. BUFFINGTON & CO.

(Indorsed:) Rec'd pay't from Messrs. King, Crim & Co.

NEW YORK, *March 31st*, 1866.

Messrs. J. W. Buffington & Co., in a/c with Sam'l Roosevelt, agt., Dr.

1865.					Dr
Nov'r 13.	To mdse. per bill	560 18	49	5 26	
23.	" " " "	23 59	39		57
"	" " " " "	52 54	2		
	Int. to May 1, '66	5 83			5 83
		642 14			

For & in consideration of the above amt. to me paid, I hereby assign to King, Crim & Co., the above a/c.

SAM'L ROOSEVELT, *Agent*

60 *Copy of substituted notes.*

$642.14.] NEW YORK, *March 28th*, 1866.

One month after date we, the subscribers, of Dawson, county of Terrell, State of Geo., promise to pay to the order of Sam'l Roosevelt, agent, six hundred & forty-two $\frac{14}{100}$ dollars, at our office, in Dawson, Georgia, with current exchange on N. Y.

Value received.

KING, CRIM & CO.

(Indorsed:) Pay William M. Peeples, or order.

SAM'L ROOSEVELT, *Agt.*

$411.17.] NEW YORK, *March 28th*, 1866.

One month after date we, the subscribers, of Dawson, county of Terrell, State of Georgia, promise to pay to the order of Sam'l Roosevelt, agt., four hundred & eleven $\frac{17}{100}$ dollars, at our office, in Dawson, Geo., with current rate of exchange on N. Y.

Value rec'd.

KING, CRIM & CO.

(Indorsed:) Pay W. M. Peeples, or order.

S. ROOSEVELT, *Agt.*

Copy of answer of King, Crim and Co., to summons of garnishment.

LONGSTREET, SEDGWICK & CO.
vs.
JOHN W. BUFFINGTON, OZEAL A. HOWE, HIRAM C. BROWN, JOHN P. SPOFFORD, of the firm of J. W. Buffington & Co.

Attachment in Terrell supr. court. May term, 1866.

61 In answer to the summons of garnishment served on respondents in the above case respondents say that they are indebted to the above defendants as follows:

One promissory note, dated Feb'y 1, 1866, & due Ap'l 1, '66	$1,147 91	
" " " " " " " " " May 1, '66	1,147 91	
" " " " " " " " " June 1, '66	1,147 91	
" " " " " " " " " July 1, '66	1,147 91	
		$4,591 64

From which amount the following payments are to be deducted:

Amt. paid S. Roosevelt, agt., for J. W. Buffington & Co., note	1,053 31	
J. W. Buffington, note to B. F. King	432 00	
Paid J. W. Edwards for J. W. Buffington & Co	232 50	
Cotton-seed warranted good, but worthless	988 75	
		2,706 56
		1,885 08
Note due 1st Jan'y, '67		4,188 00

Wherefore, having fully answered, respectfully pray to be hence dismissed.

GEORGIA, *Terrell County:*

Before me came B. F. King, J. B. Crim, J. G. Trammell, & Wm. M. Peeples, who, being duly sworn, deposeth that the facts contained in the above answer are true.

B. F. KING.
J. G. TRAMMELL.
J. B. CRIM.
W. M. PEEPLES.

Sworn to & subscribed before me this 29th May, 1866.
W. F. ORR, *J. P.*

62 EXHIBIT D.

KING, CRIM & Co.
vs.
HARRISON ROGERS, JOHN W. BUFFINGTON, John P. Spofford, Ozeal A. Howe, Hiram C. Brown.

Bill for relief and injunction in Terrell supr. court, Novr. term, 1867.

In accordance with a decree of the superior court rendered in the above-stated case at the Nov'r term, 1866, Harrison Rogers has this day turned over to me, as the attorney representing the claims against J. W. Buffington & Co. mentioned in said bill, the following notes, the receipt of which I hereby acknowledge to, viz: One note on John B. Higdon & Philipps & Fretwell for four hundred & forty-three dollars & sixty-two cents, dated Feb'y 13th, 1866, & due at 90 days after date, with a credit of one hundred & forty-three dollars & sixty-two cents endorsed on said note March 20th, 1866; one note on King, Crim & Co. for eleven hundred & forty-seven dollars & ninety-one cents, dated February 1st, 1866, & due 1 April next after, with a credit of two hundred & twenty-one dollars & sixty-eight cents, made the 24 day of January, 1867; also three other promissory notes on King, Crim & Co. for eleven hundred & forty-seven dollars & ninety-one cents each, all dated 1st April, 1866, & due as follows: the first day of May next after; the 2nd, the first day of June after; & the 3rd, the first day of July.

63 And we agree with said Harrison Rogers that he shall be discharged & relieved from all obligations & all liabilities imposed upon him by said decree so far as said notes are concerned.

Received also a receipt given by W. M. Peeples, dated February 20th, 1866, to J. W. Buffington & Co., for sundry claims, & it is agreed that said Harrison Rogers retain the amt. of the W. M. Wooten note to, viz, seventy-five dollars, & twenty-five dollars out of money coming from rent of land, making in aggregate one hundred dollars, as compensation for his agency.

Received also of said Harrison Rogers twenty dollars & twelve cents in cash, the same being balance on rent of land.

June 20th, 1867.

C. B. WOOTEN,
Atty. at Law.
L. C. HOYL,
Atty. at Law.

EXHIBIT E.

Terrell superior court, Nov. term, 1867.

LONGSTREET, SEDGWICK & CO. *vs.* J. W. BUFFINGTON & CO. } Attachment and garnishment in Terrell sup. court.

PARDEE, BATES AND CO. *vs.* SAME. } Same.

TRACY, IRWIN AND CO. *vs.* SAME. } Same.

64 E. B. Loylen & W. M. Peeples, copartners in trade using the firm-name and style of E. B. Loylen & Co., having been served with process of garnishment in the above stated case, returnable to the November term, 1866, of said court, & at which term of the court it appears they made answer under oath thereto showing an indebtedness by them to the defendants on promissory notes, after all proper credits, of the sum of eighteen hundred & eighty-five dollars & eight , with interest; & it appearing to the court that judgments in the above-stated cases have been rendered against the defendants for an amount more than sufficient to cover the said sum of eighteen & eighty-five dollars & eight cents, which judgments have not been *dis*satisfied, it is, therefore, upon motion of Wooten & Hoyl, attys. for the plaintiff, ordered by the court that the plaintiffs do recover of E. Boylen & Co. the said sum of eighteen hundred & eighty-five dollars & eight cents, with interest thereon from the first day of April, 1866, & all accruing interest, to be appropriated pro rata on the judgments aforesaid for which no executions may issue.

EXHIBIT F.

Letter from C. B. Wooten to W. M. Peeples.

Mr. W. M. PEEPLES,
Dawson, Geo.:

On making calculation I find that there is coming to Messrs. Longstreet, Sedgwick & Co. seven hundred & eighty-four dollars. Please pay to Maj. J. M. Handley that amt.

65 Dec'r 4th, 1869.
$784.00] C. B. WOOTEN, *Atty.*

EXHIBIT F.

HAVILAND, TITUS & CO. *vs.* J. W. BUFFINGTON & CO. }

Execution issued from a judgment on attachment in Randolph sup'r court.

Prin	530 46
Int	80 00
Costs	11 75

For value received, I hereby transfer to William M. Peeples the above-stated execution, together with the judgment from which it issued, without recourse on me.

Oct. 7th, 1869.

HAVILAND, TITUS & CO.,
Per RICHARD F. HAVILAND.

66 *Declaration.*

In the U. S. circuit court for the southern district of Georgia.

At a circuit court of the United States, in and for the southern district of Georgia, begun and holden at the city of Savannah on Monday, the 14th day of April, A. D. 1873, the honorable William B. Woods, United States judge for the 5th judicial circuit, and the honorable John Erskine, United States judge for the district of Georgia, among other the following proceedings were had, to wit:

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

To the honorable the judges of the fifth circuit court of the United States for the southern district of Georgia:

The petition of James M. Handley, who avers himself to be a citizen of and residing in the State of New York, in the said United States of America, sheweth that John B. Crim and William Peeples, surviving partners of the firm of King, Crim & Co., said firm being composing of Benjamin F. King, now deceased, and said survivors, who your petitioner avers are citizens of and residing in the State of Georgia,
67 in the said southern district of Georgia, in the United States of America, are indebted to your petitioner in the sum of forty-five hundred and ninety-one dollars and sixty-four cents, besides interest.

For that whereas the said King, Crim & Co., heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Dawson, to wit, in the southern district of Georgia aforesaid, made their certain promissory note in writing, bearing date the day and year aforesaid, and thereby promised, for value received, to pay to J. W. Buffington & Co., or bearer, eleven hundred and forty-seven dollars and ninety-one cents on or before the first day of April after the date thereof, which period has now elapsed, and then and there delivered the said note to said J. W. Buffington & Co., or bearer, and then and there, in consideration of the premises, promised them to pay the said sum of money specified in the same according to the tenor and effect thereof.

And for that whereas the said King, Crim & Co., heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Dawson, to wit, in the southern district of Georgia aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and thereby promised, for value received, to pay to J. W. Buffington & Co., or bearer, eleven hundred and forty-seven dollars and ninety-one cents on or before the first day of May after the date thereof, which period has now elapsed, and then and there delivered the said note to said J. W. Buffington,
68 or bearer, and then and there, in consideration of the premises, promising to pay the said sum of money specified in the same according to the tenor and effect thereof.

And for that whereas the said King, Crim & Co., heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Dawson, to wit, in the southern district of Georgia aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and thereby promising, for value received, to pay to J. W. Buffington & Co., or bearer, eleven hundred and forty-seven dollars and ninety-one cents on or before the first day of June after the date thereof, which period has now elapsed, and then and there delivered the said note to the said J. W. Buffington & Co., or bearer, and then and there, in consideration of the premises, promised them to pay the said sum of money specified in the same according to the tenor and effect thereof.

And for that whereas the said King, Crim & Co., heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Dawson, to wit, in the southern district of Georgia aforesaid, made their certain other promissory note in writing, bearing date the day and year aforesaid, and thereby promising, for value received, to pay to J. W. Buffington & Co., or bearer, on or before the first day of July after the date thereof, eleven hundred and forty-seven dollars and ninety-one cents, which period has now elapsed, and then and there delivered the said note to said J. W. Buffington & Co., or bearer, and then and
69 there, in consideration of the premises, promised said J. W. Buffington & Co., or bearer, to pay them the said sum of money specified in the same according to the tenor and effect thereof.

And your petitioner further avers that said J. W. Buffington & Co., or bearer, to whom said notes were made payable, afterwards, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and sixty-six, at Dawson, to wit, in the said southern district of Georgia, and before the maturity of said notes, for value received and in the usual course of trade transferred by delivery the said four promissory notes to your petitioner, whereby the defendants became liable to pay to your petitioner the said several sums of money specified in the same according to the tenor and effect thereof.

And your petitioner further avers that the four said several amounts in said four said several promissory notes mentioned, when added together, make said sum hereinbefore first above mentioned.

And whereas, also heretofore, to wit, on the first day of February, in the year eighteen hundred and sixty-six, to wit, in the southern district of Georgia aforesaid, the said defendants became indebted to your petitioner in the further sum of forty-five hundred and *and* ninety-one dollars and sixty-four cents for the price and value of goods then and there sold and delivered by your petitioner to the said defendants at their request, and in the further sum of forty-five hundred and ninety-one dollars and sixty-four cents for the price and value of the work then and there
70 done, and materials for the same provided by your petitioner for the said defendants at their request; and in the further sum of forty-five hundred and ninety-one dollars and sixty-four cents for money then and there lent your petitioner to the said defendants at their request; and in the further sum of forty-five hundred and ninety-one dollars and sixty-four cents for money then and there paid by your petitioner for the use of the said defendants at their request; and in the further sum of forty-five hundred and ninety-one dollars and sixty-four cents for money then and there received by the said defendants for the use of your petitioner; and in the further sum of forty-five hundred and ninety-one dollars and sixty-four cents for money found to be due from

the said defendants to your petitioner on an account then and there stated between them; and in the further sum of forty five hundred and ninety-one dollars and sixty-four cents for interest for the forbearance of your petitioner at the request of said defendants of moneys due and owing from the said defendants to your petitioner.

And whereas the said defendants, survivors as aforesaid, afterwards, to wit, on the day and year aforesaid, at Dawson, to wit, in the southern district of Georgia aforesaid, in consideration of the said promissory notes and said premises respectively then and there promised to pay the said four promissory notes and said several moneys, respectively, to your petitioner on request. Yet they have disregarded their promises and have not paid any of the said moneys in this petition mentioned,
71 or any part thereof, to your petitioner, to your petitioner's damage of nine thousand dollars, and thereupon he brings suit, &c.

Wherefore your petitioner prays process may issue requiring the said John B. Crim and William M. Peeples, survivors as aforesaid, to be and appear at the clerk's office of said court, in the city of Savannah, at rules to be had on the first Monday in November next, to answer in the premises.

HINES AND HOBBS,
Attorneys for Petitioner.

Copy of notes.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of April next we promise to pay J. W. Buffington & Co., or bearer, eleven hundred & forty-seven $\frac{91}{100}$ dollars, value received, with use. Cr. Received two hundred & twenty-one and $\frac{68}{100}$ dollars on within note, Jany. 24th, 1867.

(Signed) KING, CRIM & CO.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of May next we promise to pay J. W. Buffington & Co., or bearer, eleven hundred forty-seven $\frac{91}{100}$ dollars, value received, with use.

(Signed) KING, CRIM & CO.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of June next we promised to pay J.
72 W. Buffington & Co., or bearer, eleven hundred and forty-seven $\frac{91}{100}$ dollars, value received, with use.

(Signed) KING, CRIM & CO.

$1147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of July next we promise to pay J. W. Buffington & Co., or bearer, the sum of eleven hundred and forty-seven $\frac{91}{100}$ dollars, value received, with use.

(Signed) KING, CRIM & CO.

Process.

UNITED STATES OF AMERICA,
Southern District of Georgia:

In the fifth circuit court of the United States for the southern district of Georgia.

JAMES M. HANDLEY
vs.
JOHN B. CRIM AND WILLIAM M. PEEPLES, surviving partners of the firm of King, Crim & Co. } Assumpsit.

The President of the United States to the marshal of the districts of Georgia, greeting:

The defendants, John B. Crim and William M. Peeples, surviving partners of the firm of King, Crim & Co., are hereby required, personally or by attorney, to be and appear at the clerk's office of said
73 court, in the city of Savannah, at rules to be had on the first Monday of November next, then and there to answer the plaintiff in an action of assumpsit, as in default thereof the said court shall proceed as to justice shall appertain.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred & seventy.

[SEAL.] HINES & HOBBS,
Plaintiff's Attorneys.

JAS. MCPHERSON, *Clerk.*

Service by marshal.

I have this day served a copy of this within writ on John B. Crim by leaving it at his house of abode, in the town of Dawson, county of Terrell, Georgia, this October 1, 1870.

W. H. SMYTH,
U. S. Marshal,
By D. C. BANCROFT,
U. S. Deputy Marshal.

I have this day served a copy of the within writ on Wm. M. Peeples by handing it to him in the town of Dawson, county of Terrell, Georgia, this October 1, 1870.

W. H. SMYTH,
U. S. Marshal,
By D. C. BANCROFT,
U. S Deputy Marshal.

74 *Filing of declaration, process, &c.*

Filed the 10th day of Oct., 1870.

JAS. MCPHERSON, *Clerk.*

Judgment.

UNITED STATES OF AMERICA,
Southern District of Georgia:

Afterwards, to wit, on the 15th day of May, one thousand eight hun-

dred and seventy-three, before the judges of the said court, came the within-named plaintiff, by his attorney within named; and the said defendants also came, by their attorney, and the jurors of the jury, whereof mention is within made, likewise came, to wit:

1, WM. C. TOOK, *Foreman*;
2, BRADLEY FOLEY;
3, JACK WALTHOUR;
4, RICHARD L. NEWSON;
5, REUBEN BIRD;
6, WILLIAM TUCKER;
7, ALBERT HEAD;
8, HENRY COOK;
9, M. J. DOYLE;
10, J. L. FABIAN;
11, E. C. RICHARDSON;
12, FRANCIS OLMSTEAD;

who, being elected, tried, and sworn to speak the truth of the within contained, upon their oaths, say, "We, the jury, find for the plaintiff for the sum of thirty-one hundred and fifty-four dollars and twenty-one cents, with costs of suit, against John B. Crim, and in favor of Wm. M. Peeples, bankrupt, the other defendant, and costs."

75 Therefore it is considered that the said plaintiff do recover against the said defendant, John B. Crim, damages aforesaid, by the jurors of the jury aforesaid in form assessed; and also sixty-nine dollars and ninety-three cents for costs and charges aforesaid, to the said plaintiff, by the said court, now hereof increased, adjudged, and with his assent; and the said defendant in mercy, &c.

HINES & HOBBS,
Plaintiff's Attorn ys.

Judgment signed and filed this 15th day of May, 1873.
JAS. McPHERSON, *Clerk.*

And afterwards comes the defendant, by his counsel, and files the following, to wit:

Brief of testimony.

The following is a brief of the evidence heard in the trial of this cause:

The plaintiff introduced and read in evidence the original notes, of which the following are copies:

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of April next we promise to pay J. W. Buffington & Co., or bearer, eleven hundred forty-seven $\frac{91}{100}$ dol-
76 lars, value received, with use.

KING, CRIM & CO.

Indorsement on this note: Received two hundred seventy-one $\frac{63}{100}$ dollars January 24, 1867.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1

On or before the first day of May next we promise to pay J. W. Buffington & Co., or bearer, eleven hundred and forty-seven $\frac{91}{100}$ dollars, value received, with use.

KING, CRIM & CO.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of June next we promise to pay J. W. Buffington & Co., or bearer, eleven hundred and forty-seven $\frac{91}{100}$ dollars, value received, with use.

KING, CRIM & CO.

$1,147.91.] DAWSON, GEO., *Feb'y 1st*, 1866.

On or before the first day of July next we promise to pay J. W. Buffington & Co., or bearer, the sum of eleven hundred and forty-seven $\frac{91}{100}$ dollars, value received, with use.

KING, CRIM & CO.

The plaintiff here closed, and the defendants offered in evidence the original receipts and orders, of which the following are copies:

77 Received, Dawson, Ga., Feb'y 10th, 1866, from King, Crim & Co., seven hundred and fifty dollars, in part payment of goods.

J. W. BUFFINGTON & CO.,
Pr. H. C. BROWN.

DAWSON, GEO., *Feb'y 20th*, 1866.

Received of King, Crim & Co., four hundred and thirty-eight dollars and eight cents, in part payment of goods.

J. W. BUFFINGTON & CO.

DAWSON, GEO., *Feb'y 20th*, 1866.

Received of King & Peeples, four hundred and twenty dollars, in part payment of goods sold King, Crim & Co.

J. W. BUFFINGTON.

DAWSON, GEO., *Feb'y 20th*, '66.

Messrs. KING, CRIM & CO.:

GENTLEMEN: You will please let the bearer, if he wants, have goods and cash to the amount of two hundred dollars, including the sixty-two & $\frac{50}{100}$ dollars already paid in cash.

J. W. BUFFINGTON & CO.

Copy note.

$402.90.] NEW YORK, *Sept. 11th*, 1865.

78 Four months after date we, the subscribers, of Dawson, county of State of Geo., promise to pay to the order of Sam'l Roosvelt, ag't, four hundred & two $\frac{90}{100}$ dollars, at No. 7, Barclay st., value received.

J. W. BUFFINGTON & CO.

(Indorsed:) Received pay't from Messrs. King, Crim & Co.
SAML. ROOSVELT, *Agt.*

Copy of account.

NEW YORK, *March 31st*, 1866.

Messrs. J. W. Buffington & Co. in account with Saml. Roosvelt, agt., Dr

1865.		Y'rs.	Mo.	Days.	Int.
Nov. 13.—To m'd'se p'r bill	.....	560. 18		49	5. 26
23. " " " "	.....	23. 59			
" " " " "	.....	52. 54			57
		636. 31			5. 83
Int. to May 1, '66	.....	5. 83			
		642. 14			

For and in consideration of the above amt. to me paid, I hereby assign to King, Crim & Co. the above a/c.

SAML. ROOSVELT, *Agt.*

Letter from C. B. Wooten to Wm. M. Peeples.

Mr. WM. M. PEEPLES,
Dawson, Geo.:

On making calculation I find that there is coming to Messrs Longstreet, Sedgwick & Co. seven hundred and eighty-four dollars.
79 Please pay to Maj. J. M. Handley that amount—784. Dec. 4th, 1869.

C. B. WOOTEN, *Atty.*

Defendant offered Francis M. Harper, who, being sworn, & said that he is a practising lawyer, residing at Dawson, Terrell County, Georgia; that after the first note due, which is the subject-matter of plaintiff's suit, fell due, all four of these notes were placed in his hands for collection, by Harrison Rogers, as the agent of J. W. Buffington & Co.; and he sued that note to the May term, 1866, of Terrell County superior court; that pending that suit and long after all the notes fell due, & while they were yet in his hands for collection as the notes of J. W. Buffington & Co., suits and attachments were sued and brought in said court against J. W. Buffington & Co., in which garnishments were served on King, Crim & Co. Also a bill was filed by certain creditors of J. W. Buffington & Co. against them, and the said King, Crim & Co., to subject the balance due on these notes to their debts against J. W. Buffington & Co., in which a consent-decree was taken that the notes should be turned over to Council B. Wooten, as the attorney of said creditors, to wit, Longstreet, Sedgwick & Co., Tracy, Irwin & Co., & Pardee, Bates & Co., to receive the balance due on said notes for the benefit of said creditors. That the said original bill with consent-decree thereon has been lost or removed from the clerk's office of said court; that he, with the clerk of said court, made the most careful and thorough search through the office as many as three different times to
80 find said papers, and they were not in the office nor recorded in that office, nor is any such decree or case stated in the minutes of that court; that from the judgment or decree rendered in said case an execution issued in favor of said creditors & was placed in the hands of the sheriff for collection, and when an attempt was made by the sheriff for its collection, Peeples, one of the firm of King, Crim & Co., objected to its payment, but admitted then *the* due on said notes the sum of two hundred dollars, which he then paid over to the sheriff as a payment on these notes. C. B. Wooten, who then had these notes for the creditors of J. W. Buffington & Co., being present when the payment was made, received this money as a payment on *on* these notes, under the instructions of Harrison Rogers, the agent of J. W. Buffington & Co., & who was fully authorized so to do. Witness turned over these notes some year or two after they became due, & long after the litigation referred to by him in Terrell superior court was over, for the purpose of collecting what was due on these notes for the benefit of the creditors of J. W. Buffington & Co., whom he represented as attorney. Before turning over these notes he required that his fees should be paid for his representation of J. W. Buffington & Co. in the suit on these notes, and the litigation already referred to by him, which amounted to two hundred and twenty-five dollars, which amount was at that time paid to him by Mr

Peeples, one of the firm of King, Crim & Co., as a payment to that amount on these notes. He knows nothing of his own knowledge of any other payment on these, the credit endorsed on the note first due by $271.68, at January 24th, 1867, was not that payment?

81 William M. Peeples, being sworn, testified that soon after these notes were given, J. W. Buffington & Co., to whom they were given, left Dawson and went back to the North, except Brown, one of the partners, who remained at Dawson some twenty days or three weeks. These notes, now the subject of this suit, were given for the balance of the stock of goods, wares, and merchandise purchased by King, Crim & Co. of J. W. Buffington & Co., witness being the company of the firm of King, Crim & Co. & one of the partners, the whole amount of which purchase amounted to about sixteen thousand dollars, all of which was paid at the time of the trade, at the date of these notes to J. W. Buffington & Co., except the amount of these notes, which were given at their date and at the time of the trade for the balance of the purchase-price of said stock of goods that was not paid at that time. Some time after the notes were given, while on a visit to New York, the witness saw one of the firm of J. W. Buffington & Co. & was in'tructed by him to pay Samuel Roosvelt a debt which he had on the firm of J. W. Buffington & Co. of about one thousand dollars, which the firm of King, Crim & Co. afterwards paid to Samuel Roosvelt; the witness did not pay the money himself nor see it paid, but he knows it was paid from the statements of Crim and the credits that given to Crim on the books of the firm on account of that payment, the debts referred to on the note of J. W. Buffington & Co. and the account against that firm in favor of Samuel Roosvelt now exhibited to the court and hereinbefore copied, amounting in the whole to one thousand and forty-five $\frac{94}{100}$ dollars.

82 While the notes were in the hands of Mr. Harper, as the attorney of J. W. Buffington & Co., the witness paid to him, Harper, two hundred and twenty-four dollars for his fees for services rendered to J. W. Buffington & Co. on account of these notes, and which was to go in part payment of these notes. He also paid to the sheriff of Terrell County, on account of these notes, and which was received by Wooten at the time of the payment, he being present, and as a part payment of these notes, he then having possession of and holding them for the benefit of certain creditors of J. W. Buffington & Co. whom Mr. Wooten then represented. The witness also about the same time and while he still had these notes for the above-stated purpose, the sum of three hundred dollars in money, which Wooten claimed to be due him for fees for services rendered about these notes, and which sum was named by Wooten and paid by witness as a part payment on these notes. The witness also paid the amount specified in the order from C. B. Wooten, atty., to J. M. Handley, the plaintiff in this action, of seven hundred and eighty-four dollars; this money was paid as a payment on these notes and was so received. Longstreet, Sedgwick & Co. being creditors of J. W. Buffington & Co., for whose benefit these notes were turned over to Mr. Wooten. King, Crim & Co. received from J. W. Buffington & Co., as a part of the purchase of the stock of goods for which these notes were given, a lot of cotton-seed, which they, the said J. W. Buffington & Co., represented at the time to be sound and good seed and fit for planting purpose. These seed were taken at one dollar per bushel in said trade and amounted to within a few dollars of one thousand dollars; the amount stated in the plea of $988.75, he thinks, is the correct amount. King, Crim & Co. afterwards sold these seed to planters and they were by them planted, but they wholly failed to come up, not

83

as much as one seed to a hundred acres, and the whole lot proved an entire loss to King, Crim & Co. All payments on these notes referred to by the witness were made as payments on the notes by the instructions of J. W. Buffington & Co. while they held them, and afterwards to Mr. Wooten or on his order, while he held the notes on account of and for the benefit of the creditors of J. W. Buffington & Co. as before testified to.

Defendants read in evidence the depositions of John B. Crim and William M. Peeples, taken by interrogatories and commission, of which the following is a copy:

Examinations and depositions of witnesses produced, sworn, and examined by the undersigned commissioners in virtue of the annexed commissions issuing out of the honorable the circuit court of the United States for the southern district of Georgia, taken and reduced to writing in Dawson, Terrell County, on this the 6th day of May, 1871.

John B. Crim, aged fifty-eight years, being duly sworn, and William M. Peeples, aged forty-two years, also being sworn, answers and deposes as follows, to wit:

84 To the first interrogatory they answer: We know the parties.

To the second interrogatory they answer: The notes were given for a stock of merchandise to J. W. Buffington & Co., at Dawson, Ga., on the 1st day of February, 1866. The notes were placed in the hands of Harrison Rogers, as agent of J. W. Buffington & Co., for collection some time during the month of February, 1866.

To the third interrogatory John B. Crim answers: That, on the 10th day of February, 1866, a payment of seven hundred and fifty dollars, and on the 20th day of the same month, one payment of four hundred and thirty-eight and $\frac{08}{100}$ dollars, and one payment of four hundred and twenty dollars, making in the aggregate sixteen hundred and eight and $\frac{08}{100}$ dollars, ($1,608.08,) were made by King, Crim & Co. to H. C. Brown, one of the firm of J. W. Buffington & Co., in part payment of the stock of merchandise for which said notes were given, and receipts taken for said payments, (which receipts were attached to the interrogatories,) with the understanding that the several amounts should be credited on said notes. That said notes, he believes, were in the hands of Harrison Rogers in Dawson, Ga., at the time said payments were made.

85 To the third interrogatory W. M. Peeples answers: That there were three payments made as shown by the receipts attached to the interrogatories and as stated by John B. Crim, and that J. W. Buffington & Co. sued King, Crim & Co. on said notes in Terrell superior court, and King, Crim & Co. filed a bill in equity or injunction against J. W. Buffington & Co., and were by order of court allowed the following payments to the creditors of J. W. Buffington & Co.:

Payment to Samuel Roosvelt, agent	1,053 31
" " B. F. King, on note	432 00
" " J. W. Edwards, on order	232 50
Deduction for worthless cotton-seed	988 75
	$2,706 56

And after the foregoing payments were made and allowed, E. B. Loy-

less & Co., successors to King, Crim & Co., made the following payments to the creditors of J. W. Buffington, under garnishment:

Payment to J. M. Handley, agent of Longstreet, Sedgwick & Co., on order of C. B. Wooten	$784 00
Payment to F. M. Harper, by order of court	225 06
" " J. W. Buffington & Co., acct.	77 95
" " J. W. Edwards, bal. on order	30 00
" " C. B. Wooten, atty. fees, by order of plff. in garnishment to sheriff on fi. fa., for plff. in garnishment	200 00
	$1,617 01

86 The payments amounting in the aggregate to $5,931.65, which payments were made on the notes which are the foundation of this suit. Said notes at the time the payments were made to H. C. Brown and the payments allowed by order of court were in the hands of Harrison Rogers, and at the time of the payments made under garnishment they were in the hands of C. B. Wooten.

To the 4th interrogatory W. M. Peeples answers: I do not know that plaintiff had any knowledge of any of the payments made except the payment I made to him as the agent of Longstreet, Sedgwick & Co. of seven hundred and eighty-four dollars.

To the 5th interrogatory W. M. Peeples answers: I have answered all the questions in this interrogatory in my answer to the 3rd interrogatory except as to the time the payments were made. All the payments were made to J. M. Handley, as agent of Longstreet, Sedgwick & Co., and to C. B. Wooten, atty., and on fi. fa. to sheriff, which were some time after, but do not recollect the exact date.

To the 6th interrogatory John B. Crim and W. M. Peeples answer: The annexed receipts were given by H. C. Brown, one of the firm of J. W. Buffington & Co., to be credited on the notes given by King,
87 Crim & Co. for merchandise bought of J. W. Buffington & Co.; said receipts were given at the time as shown by their date. J. W. Buffington's name is signed to the receipts in the handwriting of H. C. Brown. We saw said Brown sign said receipts.

W. M. Peeples answers: I was in the same business-house with H. C. Brown about six months, and am well acquainted with his handwriting.

To the 7th interrogatory they answer: We know nothing more that would benefit the defendants.

X:

To the first x-interrogatory, said cross-interrogatory being annexed to these answers, they answer: That the amounts paid for which the annexed receipts were given were in payment of merchandise included in the notes given to J. W. Buffington & Co., or in part payment of said notes. It was understood that the notes which are the foundation of this suit were to be credited with the amounts for which said annexed receipts were given. The annexed receipts were not given for payment on goods not included in the notes to J. W. Buffington & Co.

88 To the 2nd x-interrogatory they answer: King, Crim & Co. bought about sixteen thousand dollars worth of goods from J. W. Buffington & Co., and paid them about twenty-seven hundred dollars in cash, and Boyd & Wilson's note for forty-four hundred and eighty-eight dollars, a lot of land valued at twenty-five hundred dollars, and King, Crim & Co.'s note for the balance, and this settlement was made prior to the date of the annexed receipt.

To the 3rd x-interrogatory they answer: The note of King, Crim & Co. was given for the bal. due on the stock of goods after making the payments stated in our answer to the 2nd interrogatory, and prior to the receipts.

To the 4th x-interrogatory they answer: They do not know at what time the notes made by King, Crim & Co. to J. W. Buffington & Co. were turned over to the creditors of J. W. Buffington & Co. and by them to the plaintiff.

All of the receipts given for payments made on the notes given to J. W. Buffington & Co., except those annexed, were attached to proceedings in court, and we have none in our possession.

W. M. PEEPLES.
J. B. CRIM.

Answered, sworn to, and subscribed before us 6th day of May, 1871.

89 HARRISON ROGERS,
Commissioner.
A. J. BALDWIN, JR.,
Commissioner.
J. R. KOOT,
Commissioner.

Cross-interrogatories.

The first cross-interrogatory is as follows:

1st cross-int'g. Do*u* you not know that the receipts attached to these interrogatories had nothing to do with the notes sued on, but that said notes were given for the balance then for a large stock of goods after deducting said credits?

To the original interrogatories & depositions were attached the original receipt and order of J. W. Buffington & Co., J. W. Buffington, hereinbefore copied of the dates of 10' and 20th of February, 1866.

We agree that the foregoing is a correct brief of the evidence had on the trial of the cause J. M. Handley vs. King, Crim & Co. had at this term of the court.

LYON & IRWIN,
Def'd'ts' Solicitors.

SAVANNAH, *May 15th*, 1873.

Filed May 15th, 1873. Jas. McPherson, clerk.

90 *Agreement and approval as to brief of evidence.*

It is now agreed that the foregoing brief of evidence may be approved by Judge Woods as correct brief of evidence had on the trial of the case at law of James M. Handley against King, Crim & Co., at April term, 1873, of this court.

This, Savannah, 15 Dec'r, 1873, not waiving the exception to its not having been approved at the time of the motion for new trial in the common-law case.

HINES & HOBBS,
Attys. for Handley.

Approved accordingly.

W. B. WOODS, *Judge.*

Endorsed:) No. . In the fifth circuit court of the United States for the southern district of Georgia, in equity. John B. Crim, complainant, vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. M., defendants. Original bill for discovery, relief, injunction, and a new trial. Filed July 16th, 1873. Jas. McPherson, clerk. F. M. Harper & Lyon & Irwin, sols. for complt.

91 NOTE.—The following pleas in the common-law case, James M. Handley vs. John B. Crim, were on the 13th day of December, 1873, ordered by the court to be attached as exhibits to bill and considered as part thereof.

Plea of John B. Crim and Wm. M. Peeples, defendants.

In the fifth circuit court of the United States for southern district of Georgia, November rules, 1870.

JAMES M. HANDLEY
vs.
JOHN B. CRIM, WM. M. PEEPLES, SURV. PARTNERS King, Crim & Co.

92 And now comes the defendants, John B. Crim & Wm. M. Peeples, by their attys., Herbert Felder & F. M. Harper, & for plea and answer says they are not indebted to plaintiff in manner and form as set forth in plaintiff's declaration, & that plaintiff ought not to maintain his action & recover against them because the notes, the foundation of said suit, have long since been paid off & fully discharged, & that defendants are not indebted to plaintiff in any way whatever.

HERBERT FELDER, *Def. Atty.*

Amended plea of defendant John B. Crim.

In fifth circuit court of the United States for the southern district of Georgia.

HANDLEY
vs.
CRIM & WM. M. PEEPLES.

And now comes the defendant Crim, by his attorney', F. M. Harper & H. Fielder, and says that plaintiff ought not further to have & maintain his aforesaid action thereof against this defendant, because he says that the said firm of King, Crim & Co., of which defendants are survivors, heretofore, to wit, at Dawson on the day of , in the year eighteen hundred and sixty , & before the commencement of said suit, & after the maturity of said promissory notes in said plaintiff's said declaration mentioned, fully paid off & discharged said promissory
93 notes & the amount of money specified in said promissory to the payees, Saml. W. Buffington & Co., & the creditors of said Buffington & Co., of which the said plaintiff then & there had notice; of all which the said defendant is ready to verify; & of this he prays the judgment of the court.

F. M. HARPER,
H. FIELDER,
Deft.'s Attys.

To the 3rd x-interrogatory they answer: The note of King, Crim & Co. was given for the bal. due on the stock of goods after making the payments stated in our answer to the 2nd interrogatory, and prior to the receipts.

To the 4th x-interrogatory they answer: They do not know at what time the notes made by King, Crim & Co. to J. W. Buffington & Co. were turned over to the creditors of J. W. Buffington & Co. and by them to the plaintiff.

All of the receipts given for payments made on the notes given to J. W. Buffington & Co., except those annexed, were attached to proceedings in court, and we have none in our possession.

W. M. PEEPLES.
J. B. CRIM.

Answered, sworn to, and subscribed before us 6th day of May, 1871.

89 HARRISON ROGERS,
Commissioner.
A. J. BALDWIN, JR.,
Commissioner.
J. R. KOOT,
Commissioner.

Cross-interrogatories.

The first cross-interrogatory is as follows:

1st cross-int'g. Do*u* you not know that the receipts attached to these interrogatories had nothing to do with the notes sued on, but that said notes were given for the balance then for a large stock of goods after deducting said credits?

To the original interrogatories & depositions were attached the original receipt and order of J. W. Buffington & Co., J. W. Buffington, hereinbefore copied of the dates of 10' and 20th of February, 1866.

We agree that the foregoing is a correct brief of the evidence had on the trial of the cause J. M. Handley vs. King, Crim & Co. had at this term of the court.

LYON & IRWIN,
Def'd'ts' Solicitors.

SAVANNAH, *May 15th*, 1873.

Filed May 15th, 1873. Jas. McPherson, clerk.

90 *Agreement and approval as to brief of evidence.*

It is now agreed that the foregoing brief of evidence may be approved by Judge Woods as correct brief of evidence had on the trial of the case at law of James M. Handley against King, Crim & Co., at April term, 1873, of this court.

This, Savannah, 15 Dec'r, 1873, not waiving the exception to its not having been approved at the time of the motion for new trial in the common-law case.

HINES & HOBBS,
Attys. for Handley.

Approved accordingly.

W. B. WOODS, *Judge.*

Endorsed:) No. . In the fifth circuit court of the United States for the southern district of Georgia, in equity. John B. Crim, complainant, vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. M., defendants. Original bill for discovery, relief, injunction, and a new trial. Filed July 16th, 1873. Jas. McPherson, clerk. F. M. Harper & Lyon & Irwin, sols. for complt.

91 NOTE.—The following pleas in the common-law case, James M. Handley vs. John B. Crim, were on the 13th day of December, 1873, ordered by the court to be attached as exhibits to bill and considered as part thereof.

Plea of John B. Crim and Wm. M. Peeples, defendants.

In the fifth circuit court of the United States for southern district of Georgia, November rules, 1870.

JAMES M. HANDLEY
vs.
JOHN B. CRIM, WM. M. PEEPLES, SURV. PARTNERS King, Crim & Co.

92 And now comes the defendants, John B. Crim & Wm. M. Peeples, by their attys., Herbert Felder & F. M. Harper, & for plea and answer says they are not indebted to plaintiff in manner and form as set forth in plaintiff's declaration, & that plaintiff ought not to maintain his action & recover against them because the notes, the foundation of said suit, have long since been paid off & fully discharged, & that defendants are not indebted to plaintiff in any way whatever.

HERBERT FELDER, *Def. Atty.*

Amended plea of defendant John B. Crim.

In fifth circuit court of the United States for the southern district of Georgia.

HANDLEY
vs.
CRIM & WM. M. PEEPLES.

And now comes the defendant Crim, by his attorney', F. M. Harper & H. Fielder, and says that plaintiff ought not further to have & maintain his aforesaid action thereof against this defendant, because he says that the said firm of King, Crim & Co., of which defendants are survivors, heretofore, to wit, at Dawson on the day of , in the year eighteen hundred and sixty , & before the commencement of said suit, & after the maturity of said promissory notes in said plaintiff's said declaration mentioned, fully paid off & discharged said promissory
93 notes & the amount of money specified in said promissory to the payees, Saml. W. Buffington & Co., & the creditors of said Buffington & Co., of which the said plaintiff then & there had notice; of all which the said defendant is ready to verify; & of this he prays the judgment of the court.

F. M. HARPER,
H. FIELDER,
Deft.'s Attys.

Replication.

And now comes the said plaintiff, and by way of replication says that it is not true that said defendant paid off the amount due on said notes sued on after they matured and with notice to this plaintiff, but that the same are due and owing; & of this they put themselves on the country, &c.

HINES & HOBBS,
Plff's Attys.

Amended plea of defendants.

In the fifth circuit court of the United States for the southern district of Georgia.

JAMES M. HANDLEY
vs.
KING, CRIM & CO.

And for amendment to defendant's plea, by leave of the court
94 for that purpose first had & obtained, defendants, by their counsel, say that said promissory notes were given by them to S. W. Buffington & Co. for a stock of goods, wares, & merchandise, amongst which was a lot of cotton-seed which the said S. W. Buffington & Co. represented & warranted to be sound & fit for planting purposes & would come up when planted, & which were valued & taken by defendants in said purchase at the price or sum of $988.75, nine hundred & eighty-eight and $\frac{75}{100}$ dollars, & defendants aver that they were not sound & fit for planting purposes, & that when sold & planted they failed to come up, & as defendants had sold them in the like way they failed to collect the money or to receive any of the purchase-price therefor, but the whole thereof became & was a total loss to defendants of which said plaintiffs had notice; & of this defendants put themselves on the country.

And for further plea defendants say that while said notes were yet in the hands of said S. W. Buffington & Co. defendants paid to them on said notes & as part payment thereof the sum of three thousand dollars, or other large sum thereon, of which said plaintiff had notice; & of this defendants put themselves on the country, &c.

And for further plea defendants say that after said notes were given as aforesaid they were placed in the hands of one Harrison Rogers, as the agent of said S. W. Buffington & Co., for collection, who placed them in the hands of F. M. Harper, esq., an attorney at law, for suit on them, or one of them, & which they were; said notes were in this condition in the suit & in hand of counsel for suit certain conditions, to wit: Samuel Roosevelt & Co., Longstreet, Sedgwick & Co., Tracy, Irwin & Co., Pardee, Bates & Co., if the said S. W. Buffington & Co., by their counsel, C. B. Wooten, commenced proceedings in the superior
95 court of the county of Terrell, where defendants then & now reside, & where the suit at the instance of the said S. W. Buffington & Co. was then pending against the said S. W. Buffington & Co. & these defendants for the purpose of charging these notes, the subject-matter of this suit, with the payment of the debts of said S. W. Buffington & Co., & on the trial thereof such proceeding was had, as settled by the judgment & decree of that court the amount of these defendants' then unpaid balance on said notes & which amount was to be paid to said

creditors aforesaid, all of which defendants have long since paid off & discharged, of which said plaintiff had notice.

And for further plea defendants say that after the purchase by defendants as aforesaid of the said stock of goods, wares, & merchandise of the said S. W. Buffington & Co., defendants sold the same to certain persons in the town of Dawson, in the county of Terrell, in said State, using the firm-name of E. B. Loyless & Co., at & for the price or sum as agreed on of ten thousand dollars, the said E. B. Loyless & Co. then & there agreeing to pay off & discharge the debts of defendants given to S. W. Buffington & Co. for said stock of goods, & other debts due by defendants to other creditors given for other goods added to said stock as purchased from said S. W. Buffington & Co., the whole of which, being largely in excess of said debts of defendant & good & available, were turned over by defendants to C. B. Wooten as the attorney at law of said creditors; all of which or a sufficiency thereof for the purpose was realized and collected by the attorney of said creditors as aforesaid, & the said debts discharged & paid off in that way, & the whole of the same became lost to defendants, except in the payment of said debts, & no part of the same has been realized in any other
96 way by these defendants, of all which plaintiff had notice; & of this defendants themselves on the country.

LYON & IRWIN &
F. M. HARPER,
Defts.' Attys.

And the said William M. Peeples, one of said defendants, in his own behalf, for plea says that he was adjudged a bankrupt on the day of , in the year 187 , & he is such adjudged bankrupt by judgment of the district court of the United States for the southern district of Georgia, as appears by the records thereof upon file now remaining of record in said court; & of this he prays the judgment of the court.

LYON & IRWIN,
Defts.' Attys.

97 *Interlocutory decree.*

This cause came on to be heard before me at chambers, on the 31st July & 1st & 2d of August, 1873, on bill, demurrer, & affidavits, & was argued by counsel, whereupon it is adjudged & ordered that the writ of injunction as prayed for be, & it is hereby, denied.

The judge does not pass upon the question whether the demurrer was well taken or not.

The bill is retained for the purpose of being heard at the next term of the circuit court.

It is further ordered that the execution issued in this cause do proceed, without any delay, to be executed in accordance with the exigency of said writ of execution.

JOHN ERSKINE,
U. S. Judge.

AUGUST 2, 1873.

It is further ordered by the judge that an early day of the next term of said court, which may suit the convenience of the court at said term, that a hearing of this cause be had for a new trial, & that each party go forward & collect, prepare, and bring into said court all such evidence that they desire to use on said hearing.

JOHN ERSKINE,
U. S. Judge.

AUGUST 2, 1873.

98 *Subpœna.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

JOHN B. CRIM, COMPLAINANT,
and
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, and William H. Smyth, U. S. M., defendants. } In equity.

The President of the United States of America to James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. marshal, greeting:

For a certain cause offered before the judges of the circuit court of the United States for the southern district of Georgia, in equity, you and every of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in September next, to answer to those things which shall then and there be objected to you in a bill for discovery, relief, injunction, and a new trial, and to do further and receive what the said court shall have considered in that behalf; and this you may in no wise omit, under penalty of five hundred dollars; and have here this writ.

Witness the honorable Nathan Clifford, senior associate jus-
99 tice of the U. S. Supreme Court, this sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-three.

JAS. McPHERSON, *Clerk.*

MEMORANDUM.—The defendants are to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken pro confesso.

LYON AND IRWIN,
Solicitor for Complainant.

Return of service.

Due and legal service of a copy of the within subpœna, also of notice for hearing on a motion for writ of injunction before Judge Woods, in chambers, at Newark, Ohio, on 30th July inst., is hereby acknowledged, further service waived, and all objection to a hearing and consideration by the judge while outside the fifth judicial circuit also waived this 16th July, 1873.

W. H. SMYTH,
U. S. Marshal.
By C. P. FREEMAN,
Deputy.

Having no objection to its being heard out of the circuit.

HINES & HOBBS,
Attys. for J. M. Handley.
C. B. WOOTEN,
For Himself.

100 (Endorsed:) In the circuit court of the United States for the southern district of Georgia. September rules, 1873. John B. Crim, complainant, and James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. M., defendants. In equity. Original. Subpœna in equity. Filed July 16th, 1873. Jas. McPherson, clerk. Lyon and Irwin, complainant's solicitor. Returned: Service ack'd. July 31, 1873.

Notice to counsel for a hearing for injunction.

JOHN B. CRIM
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, William H. Smyth, U. S. marshal.

} In equity. Application for injunction, discovery, relief, & new trial.

To James M. Handley, & his attorneys at law, Hines & Hobbs, & Council B. Wooten, & the other defendants:

Take notice that we shall, on behalf of the complainant, apply to his honor, William B. Woods, one of the judges of the 5th circuit court of the U. States *court* for the southern district of Georgia, at Newark, Ohio, on Wednesday, the 30th July inst., at 12 o'clock a. m.,
101 for an injunction to restrain said Handley, his agents and attorneys, from advertising the property of complainant, levied on under the execution of James M. Handley vs. John B. Crim, issued from the fifth circuit court of the United States for the southern district of Georgia, and from collecting or enforcing said execution until the further order of the court, this 19th July, 1873.

LYON & IRWIN,
Complt.'s Solrs.

(Endorsed:) U. S. cir. court, so. dist. of Georgia, in equity. John B. Crim vs. James M. Handley et al. Notice to counsel for a hearing for injunction. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complt.

And afterwards, to wit, on the 31st day of July, A. D. 1873, the complainant, by his solicitors, Messrs. Lyon & Irwin, moved the court for leave to amend his bill; which, being granted, he thereupon filed his amendment as follows:

Amendment to bill.

In fifth circuit court of the United States for the southern district of Georgia.

JOHN B. CRIM
vs.
JAMES M. HANDLEY, WILLIAM M. PEEPLES, Council B. Wooten, & Wm. H. Smyth.

} In equity for injunction, discovery, relief, & new trial.

102 Orator further showeth unto your honors, in addition to what is contained in his above-stated bill as filed & in continuation thereof, that when he sold out his said stock of goods, or his aforesaid interest therein, purchased of J. W. Buffington & Co. as aforesaid, & which constituted nearly the whole thereof, the said interest of Pee-

ples therein being small in proportion to the whole, the said Peeples had nothing or anything visible of property, or in fact within the knowledge of orator, except his interest in said stock of goods; but E. B. Loyless, the other member of the firm of E. B. Loyless & Co., to whom he sold out, was at that time a man of apparently large means, possessed in his own right of a large amount of real estate & other property of great value, & was supposed, by himself as well as others, to be worth as much as one hundred thousand dollars or other large sum, & orator considered him perfectly solvent; but for his perfect security he took from said E. B. Loyless for his security, & to insure the performance of the obligations & undertaking with orator, a mortgage on a large amount of valuable real estate, sufficient in value to cover the whole amount of his undertaking & to protect orator from all loss or risk under any circumstances. It was for this reason that he felt so perfectly safe, & gave the matters and litigation referred to in his foregoing bill so little attention, & the only notice or attention he gave the matters was to inquire of said Council B. Wooten occasionally how the affair was progressing, & when he was informed by him at one time that the whole of the notes were paid off except about 1,800$ he felt that he had no risk to run, & that the obligation of E. B. Loyless & Co. would be fulfilled; and again, when he was informed by said Wooten that all was paid off but between seven & eight hundred dollars, and Peeples, of the firm of E. B. Loyless & Co.,
103 claimed that the whole amount was paid off, your orator felt under the circumstances that as it was the debt of E. B. Loyless & Co., under their agreement with him it was his duty not to interfere in the matter, but to let the controversy between Wooten, representing the creditors of J. W. Buffington & Co. & E. B. Loyless & Co. be settled between themselves, especially as he was indemnified & protected against loss himself by the security aforesaid.

About this time & prior thereto the said E. B. Loyless became greatly embarrassed, so much so that his solvency was extremely doubtful, as it has remained, and orator, by advance of money to him, by taking up outstanding debts against him, which he did, reduced his securities to just sufficiently to amply secure or indemnify himself only for the amount claimed to be due & unpaid on these debts by Mr. Wooten; indeed the whole of the property was sold under executions against said Loyless & purchased in by orator, the mortgage still remaining & the whole title vesting in orator, subject to said mortgage orator afterwards voluntarily agreeing with Loyless that when the said debts were paid & his aforesaid advances, or that whatsoever was in the property over and above Loyless' family should have the benefit of, & now if the whole of said property was sold at & for cash it would not bring or realize more than some fifteen hundred dollars over & above the other advances of orator to & for Loyless, including other incumbrances held by orator on the same, to go on to this judgment of Handley, leaving all the balance thereof a total loss to orator, all of which advances by orator & his said further incumbrances on said property were made & incurred on the faith of the declarations & statements of said Wooten, under whom the said Handley held said notes & debts after they were all due & after they were placed in his hands by Harrison Roger as aforesaid under the decree as aforesaid, & to carry
104 its terms out as aforesaid.

Your orator further showeth unto your honor that on the said trial at law, wherein the judgment was rendered as aforesaid, the note & account in favor of Roosevelt as aforesaid, & the order in favor of

Handley from Wooten for 784$, on the testimony of Peeples, were ruled out by the court as not sufficiently proven, when orator's counsel moved for a continuance to procure additional evidence in support thereof, the court ruled that a continuance should be granted unless plaintiff's counsel would consent for them to be read to the jury as evidence for what they were worth, subject to such weight and affect as the jury might give them. Orator's chances for a continuance was then cut off, & Handley's counsel in their argument to the jury, in conclusion, insisted that these were not payments; that they were not sufficiently proven, & entitled to no credit whatever; all of which was believed by the jury, & these amounts as payments to creditors wholly denied, & are thereby lost to orator, although the said plaintiff and his aforesaid counsel well knew that they were proper credits & should have been allowed. This & the confusion, sudden failure of recollection, & indisposition of Peeples as a witness on these & all other points, operated as a complete surprise on orator & his counsel; and before your orator was fully informed of these facts & because possessed of the other evidence & facts which would overcome or supply the defect occasioned thereby, said other evidence & facts being as hereinbefore set out, by incorporating these additional facts & affidavit in support thereof in a motion for new trial before the said court of law, so as to enable that court to act thereon for the benefit of orator, the said term of the court had elapsed, & it was too late to make that motion before that court, & accord-
105 ing to the rules & practices thereof. The motion might have been made on these grounds; but orator nor his counsel were in possession of all the facts necessary to be incorporated in proper affidavits accompanying said motion to make them available in said motion before said court. Your orator did not then know how the Roosevelt claim had been paid, could not have explained the same to the court, & did not learn the exact facts until it was too late to put them in his motion for new trial, & so of the payment to Handley by Peeples on Wooten's order. The whole of this business and the payments were made by Peeples as aforesaid, without at the time advising or even consulting orator. Orator was only advised generally of the scheme for settlement of the notes that was being carried on by Peeples & Wooten, but was ignorant of all the details & did not think it was necessary for him to be advised thereof, under the circumstances, as he understood that there was no controversy; but as to the balance of seven or eight hundred dollars claimed by Wooten, & denied by Peeples, and for this he was indemnified, he never supposed, or heard it intimated by the plaintiff, or any of his counsel, that any further or other sum than this would be claimed, or attempted to be collected, until after the trial was over, and then, before he could recover from the surprise into which he was thrown by the unexpected result, & collect the facts necessary to establish his full defence, as herein before set out & shown to your honors, it was too late to bring the same before the court giving said judgment, in a proper motion for a new trial in & before that court, said court having in the mean time adjourned.

Orator further showeth that very soon after said verdict was
106 rendered, & while your orator's motion for new trial was pending before said court, the original bill, amended bill, verdict, & decree there of King, Crim & Co. vs. J. W. Buffington & Co. & Harrison Rogers, which had been so long absent from the clerk's office of Terrell superior court, & which had been so carefully and anxiously searched for by orator's counsel before said trial, was suddenly discovered by the clerk & made known to orator. Your orator was then at Dawson, some 300

miles from Savannah, when the court was in session, immediately had the fact of the discovery of these papers dispatched to his counsel in Savannah, who received the dispatch just as he had concluded his argument to the court in support of his motion for a new trial in said cause, & just as the said court was in the act of commencing to deliver his judgment on said motion, when orator's counsel immediately got up & moved the court to suspend its judgment on motion for new trial until orator could get these papers before the court, their discovery, & in support of motion for a new trial. The court refused the motion at once, suspecting, no doubt, from an intimation that fell from the court, in that these papers were found to' soon after the trial, that orator, or his counsel, or some one for whom he was responsible, must have been privy to their loss or absence from their proper place of custody; and, if such was the opinion or suspicion, orator denies most emphatically that there was the slightest ground therefor, so far he, or his knowledge, or belief is concerned. Orator, from the instructions & advice of his counsel, who conducted the defense from the beginning, earnestly & in good faith desired the production of these papers on that trial, & used all means & efforts in his power, & that of his counsel & agents to discover, so as to have them before the court at that time. That he failed was from no fault of his or that of his counsel.

107 Orator further shows that but for the belief that said papers were lost forever, or if he had the slightest hope that they would ever come to light, he would never have voluntarily gone to trial without them, & this orator was deprived of the benefit of these papers & the evidence they offered in his defence.

Your orator further showeth that he never heard of the existence of the receipt of Council B. Wooten to Harrison Rogers, a copy of which is attached as exhibit to complainant's said bill, & had no knowledge of it whatever until it was too late to incorporate it in the motion for new trial, & such is the fact as to the receipt of Haviland, Titus & Co., also on exhibit to the bill, or they would have been incorporated therein. And your orator is confident that if all these facts had been before the court & jury in the trial of said case, the verdict of said jury would have been in favor of your orator, nor does orator doubt, but so believes & charges, that if he had been able to have collected these additional facts & proofs to have laid before the court of law in time, properly & in proper form, in his motion for new trial as he now presents them to this honorable court, but that a new trial would have been granted to him in that court. All of which is respectfully submitted to your honor as a part of his bill in equity to this honorable court for a new trial in said cause.

LYON & IRWIN,
F. M. HARPER,
Compl't's Sols.

GEORGIA, *Bibb County:*

You, John B. Crim, do swear that the facts set forth and contained in this your foregoing bill & in continuation thereof, so far as they depend on your own knowledge, are true, & so far as they depend on the knowledge or information derived from others you believe

108 them to be true.

J. B. CRIM.

Sworn to and subscribed before me this 22nd July, 1873.
Sworn to and subscribed before me this 22 of July, 1873.

N. SELLERS HILL,
U. S. Comr. Southern Dist. Ga.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. John B. Crim, complainant, vs. James M. Handley, Council B. Wooten, William M. Peeples, & Wm. H. Smyth, U. S. marshal, defendants. Amendment to bill. Filed July 31st, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

And afterwards, to wit, on the day and year aforesaid came the defendant, James M. Handley, by his solicitors, and filed his answer, as follows:

Separate answer of James M. Handley to the bill of complaint of John B. Crim in said court.

This defendant, *does* and at all times saving and reserving unto himself all and all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or so much
109 thereof as this defendant is advised it is material or necessary for him to make answer to, (expressly, however, not waiving his plea and demurrer heretofore filed in this case,) answering, saith:

That the whole facts stated in said bill are so purposely confused and mistified that this respondent has utterly been unable to understand them, and that he does not admit them by his silence, but calls upon him for proof of the same, and he particularly says that the statements in said bill made and sworn to by said Crim, who confesses in it he gets his whole information from Wm. M. Peeples, are not to be taken as admitted because not specifically denied, and he calls attention to the discrepancy in the amount stated to have been the purchase money of said goods, as given in said bill, and the testimony of said Peeples, and calls upon said complainant to sustain the statements of said bill as to how the stock of goods bought by King, Crim & Co. from Buffington & Co. were paid for, and dates and amounts of said payments, and he denies to the best of his information and belief that the statement given is a true one, and he especially denies that any subsequent agreement of E. B. Loyless & Co. with King, Crim & Co. has anything to do with the rights of this respondent to collect the said judgment in his favor against them, nor has the representations of J. W. Buffington & Co. as to their debts capable of affecting the rights of this respondent in the premises. He admits the indebtedness of J. W. Buffington & Co., and the deposit of the four notes of King, Crim & Co. in the hands of hands of Harrison Rogers by Buffington & Co., but he was simply their agent for collecting them. The allegation in said bill as to the payment of the claims due S. Roosevelt & Co., $1,045.04, J. W. Edwards, $232.30, this respondent denies to be true, to the best of his information and belief.
110 Respondent admits that suit was brought by F. M. Harper on the first note of King, Crim & Co. for 1,145, and that King, Crim & Co. filed their bill to enjoin the action, and that the copies of said bill, amendment, and decree are true copies. Respondent utterly denies the reason alleged as being a good one why the cotton-seed proving worthless and damages for them should not have been claimed in said bill, for if the original bill was filed in April, before their failure was discovered, the amendment was not filed till 26' November, 1866, and the decree was not entered until 30' November, 1866, at which time this fact of their failure would have been fully known. The fact is, no such failure of the seed ever happened, and no such deduction should have been demanded or allowed, as this respondent believes and so charges. This respondent

admits the list of indebtedness of J. W. Buffington & Co. as given as being correct except that of B. F. King for $432.00, but denies that they made any agreement with Peeples looking to pay him any commission for securing those debts or collecting them; in fact he could not honestly accepted such a position, nor were these notes ever turned over to him, but they, to the best of respondent's memory, recollection, and belief, sent to Wooten & Hoyl as attorneys, for collection. Respondent admits that garnishement was served by Longstreet, Sedgwick & Co., but has no recollection of any other being filed, but utterly denies that any such action was taken as alleged, as that said creditors of J. W. Buffington & Co. accepted the said answer to said garnishement as the measure of their rights; in fact the whole of said pretended answer was a fraud attempted to be committed upon the rights of said creditors, and the said judgment under said garnishement was set aside, and six months afterwards a decree taken to collect said notes by consent of said
111 King, Crim & Co., and it was not pretended that more than 1,200$ had been paid out by said King, Crim & Co., and the whole of said pretended answer to the garnishement was abandoned, and these facts are all shown by the record attached to said bill, and was well known to complainant. Respondents admits the sale by complainant to E. B. Loyless & Co. of the stock, but feels great wonder that he relied upon their agreement and integrity as stated, knowing them as he did; he also admits the cotton-seed defence was not set up by them, for the simple reason that it had no existence, and admits the said decree only looked to the crediting of said claim of Roosevelt on said notes, and ordered the said notes of King, Crim & Co. to be collected for the balance due for the benefit of the creditors of said J. W. Buffington & Co. Respondent admits the notes of King, Crim & Co. were turned over by Harrison Rogers to Wooten & Hoyl, as stated, as attorneys for the creditors of J. W. Buffington & Co., and a receipt given therefor; it being thought best, as the trust delegated to said Rogers was a very plain and simple one, that it was best to let him execute it by delivering over to the creditors these notes, and let them collect them, each for himself, and this was done by and with the advice and consent of said King, Crim & Co. and the notes turned over to Wooten & Hoyl; that said attys. attempted to collect said judgment taken in the garnishement case of Longstreet, Sedgwick & Co., when said E. B. Loyless & Co. for King, Crim & Co. took the illegality thereto and refused to pay it, and the same on their motion was set aside, showing the fraudulent intent of King, Crim & Co., & they now come up and attempt to practise a fraud on this court by setting up said judgment on said garnishement as an adjudication in their favor as to a certain amount being due, when it seems (?) to vail (?) their interest and desire to delay, after they have re-
112 fused to be bound by it, or to pay it; said answer was filed to said garnishement on 29th May, 1866; there a decree that they should pay these notes sued on by Handley, save the debts of Roosevelt & Edwards, amounting to about 1,200$, was dated 30 Nov., 1866. Respondent says all the assets received by Wooten & Hoyl from Harrison Rogers, as far as he knows & believes, was the four notes of King, Crim & Co. for $1,147.91 each; that said complainant well knows the note of Boyd & Wilson for 4,188$, was turned over by Buffington & Co. to Wooten & Hoyl months before, to pay other debts; that is was sued & collected by them, and paid to other creditors of Buffiington & Co., and that said Peeples himself was one of them, and that he received more than half the money. The said complainant also well knows, as respondent believes and so charges, that John B. Higdon and Philip

Z. Fretwell (there being no such firm as Phillips & Fretwell) are, and have for years been, utterly insolvent, and he, complainant, is personally well acquainted with them and has been for years, and the allegations in said bill as to their solvency are knowingly and corruptly false. Respondent also states that the said Crim also knows that the allegations in said bill that said W. M. Peeples paid Haviland, Titus & Co. $662.21 on the notes sued on by him is a wilful falsehood, for he knows, as respondent believes, and respondent alleges the fact to be, that their debt was levied on a lot of land of Buffington & Co., lying in Randolph County, Georgia; that said Peeples bought it at the sale and paid about 8 or 900$ for it, and that this matter was entirely distinct from the notes handed to Wooten & Hoyl by Harrison Rogers, under the decree, and that the attempt to bring this into litigation is a patent fraud. Peeples,
113 long after the sale, took the transfer of the fi. fa. Respondent denies that any judgment on the garnishement vs. King, Crim & Co. was ever had, and the absence of a certified copy of it in plaintiff's bill shows this to be true, and he denies that any agreement or understanding was ever entered into admitting only $1,885.08 to be due by them. He demands that true copies of said answer & judgment shall be filed with this bill of complaint, and unless it is done he shall believe all such statements as to said answer & judgment are false, and so charges the fact to be. Respondent further says that the amount paid Harper 221.00, was, he is informed, credited on said notes, and admits, and never denied, that the 784$ paid him was received by him as agent, whilst representing Longstreet, Sedgwick & Co., as a compromise on their claim. He denies 300$ was ever paid O. B. Wooten as fees which should be credited on their notes, also admits he has been informed by C. B. Wooten that 200$ paid to the sheriff by Peeples is a proper credit, but Peeples took the affidavit of illegality, and it was found that no judgment ever was entered up against J. W. Buffington & Co. The judgment against the garnishees was set aside on that sole ground. The answer of E. B. Loyless & Co. and the judgment against them can in no way, however, be looked upon as any judgment in favor of King Crim & Co.; these were distinct copartnership firms and one had nothing to do with the other, and if it had, this judgment was afterwards set aside.

This respondent says that after said notes were turned over to said Wooten & Hoyl every proper effort to collect them was made, but said King, Crim & Co. would make no settlement. The payment of the order of said Wooten in favor of respondent, as agent, and which states 784$ was due Longstreet, Sedgwick & Co. on their claim of $1,300, &
114 the payment of said order on 4th December, 1869, by Peeples was a clear admission that the same amount was then due Pardee, Bates & Co. and Tracy, Irwin & Co., and the claim of these two parties alone was then, prin. & interest, $3,900, 50 per ct. of which would have been about $1,950, and with int. from 4 Dec., '69, to the date of the verdict in May, '73, was about 2,400$, which the said Peeples, by paying said Longstreet, Sedgwick & Co. $784 on 4 Dec., '69, as their pro rata, admitted that amount due, but this respondent accepted said amount only as a payment of part, in the spirit of compromise, and not in full of the amt. really due Longstreet, Sedgwick & Co., and hence feels that the full amount of the verdict given him of $3,154.21 is now actually due, and he denies all allegations in said bill to the contrary thereof; and he further denies all allegations in said bill intending, by insinuations or in'uendo, to create the impression he only claimed 800$ on said debts. He claimed that King, Crim & Co.'s notes were put into his hands to pay the said notes & a/cs. of Buffington & Co. given to Tracy,

Irwin & Co., Pardee, Bates & Co., and this, of principal and interest, was over four thousand eight hundred dollars ($4,800) on the day of the trial at Savannah. These notes had come into his hands as the only credits remaining of said firm of Buffington & Co. *who was* unpaid, and he had bought said claims against Buffington & Co. in the due course of trade and for a fair and valuable consideration, as is hereinafter explained. He could not credit said notes with what had been paid, because he did not know how much to credit, and said King, Crim & Co. pretended all of them were paid, and claimed that the receipts for goods paid for, amounting to $1,808, should be credited, (which they now admit was not true,) should be put as a credit on said notes, and claimed
115 other credits quite as preposterous as this; and, finding they never intended to pay him one dollar if they could get out of it, brought suit, and, after a fair and impartial trial before a jury, in the circuit court of the United States at Savannah, at the April term, 1873, recovered a verdict. In this trial every issue presented by this bill was fully and fairly investigated, and the whole object of that trial was to fix how much had been paid, and every possible chance was given said King, Crim & Co. to do so. There was no effort made to take any advantage of them, and none was desired. The issue of payment was the only one made in the pleadings, and the plea was sustained to the amount of 3,700$; for the four notes, with interest, amounted, at June, '73, to 6,800$, and the verdict being for $3,154, leaves about 3,700$, with which said defendants were credited. The jury did this, and this respondent submitted to the loss, although Judge Woods, on overruling the motion for new trial made by complainant, stated he would grant a new trial at respondent's instance, if applied for, as it was manifestly contrary to evidence in being for $2,000 too little. How said verdict was arrived at this respondent, of course, does not know. The only plea was payment, and said statement in said bill that the jury allowed the cotton-seed is made most unfortunately, for the jury were charged by Judge Woods that unliquidated damages of this kind could not be set up under a plea of payment and against the bona-fide purchaser and holder of the notes until it was shown the cotton-seed was unsound on day of sale. The said bill shows that the whole issues attempted to be set up have been passed upon; that the whole testimony relied upon for a new trial, even if this respondent was to admit the statements in said bill, could have been obtained if diligence had been used;
116 that it is cumulative and impertinent to the issue; that the whole matter is res adjudicata, and that there has been no fraud practised upon him, but that the said complainant has been guilty of the grossest negligence in the whole matter, according to his own bill.

Respondent further says that complainant's own bill shows said Peeples can never be used as a witness in this case before any jury, and a new trial would do him no good, he having sworn that the receipts "for money paid on goods" were intended to go on these notes. The bill now says it was not true. Peeples swore, in the original bill in Terrell County superior court, then in the amendment, then in both answers to the two garnishements, then in his evidence by interrogations in the case in Savannah, and then on the stand at the trial, "that $1,053.54 had been paid to S. Roosevelt on his claim;" whereas said bill now admits this was not true, and that only 812.54 was paid, and the balance "charged to 'profit & loss,'" by which it meant Peeples was to make the difference by false statements. Peeples, on cross-examination, when pressed into truthfulness, admitted he was not present when it was paid. Said bill now pretends this was false; and, if so, it disqualifies

Peeples as a witness in a court of justice; in fact, the statements of said bill as to the character and conduct of said W. M. Peeples in this whole matter shows conclusively that from either want of mind or character he could not be brought before a jury as a credible witness; and as said Crim says he himself relies entirely on Peeples alone as a witness, he has destroyed by his averments any chance of using him; and his willingness to swear, as expressed in said bill, can but alarm
117 this respondent if the privilege is allowed him.

This respondent denies he knew of the payments alleged to have been made to Haviland, Titus & Co., Wooten, Harper, & the sheriff, and fraudulently concealed the fact. The truth is, he sat in the court-room ready to be sworn by the said King, Crim & Co., (having come from his home in New York for the purpose,) during the trial, and did not conceal anything from said complainant; and said allegation is utterly false.

This respondent utterly denies the whole long story told in the said bill as to the pretended loss of said records, and bills, and decrees in Terrell superior court. He never moved them himself nor knew of its being done, or authorized any one to do so. The decree was regarded as very important to his case, as being a full statement of the whole payments made by King, Crim & Co. to its date; as having committed the said King, Crim & Co., by consenting to the collection of their debts, and as proving that the said W. M. Peeples, in his interrogatories, had sworn falsely, for the copy of his interrogatories as given in said bill shows he stated that King, Crim & Co. were allowed credits by that decree of $2,706.56, whereas the decree shows nothing of the sort. There is no question that said King, Crim & Co. know more of these papers than has come to light; and these being found in a few hours after Peeples reached Dawson, as was dispatched back to Savannah, was very suspicious, and shows if needed before they could have been found also. Respondent had not been in Dawson for several years, and was in Savannah when so found. The motive for their loss, and subsequently being found after the case was lost, is too clear for comment. This respondent says, however, that said decree and
118 records makes his case really stronger than it was before the jury, and adds nothing to the merits of said bill for a new trial. Respondent utterly denies all the allegations in said bill as to the complainant's being surprised by being told by said Wooten that there was only seven or eight hundred dollars due on said notes. This is all pretence and false. This respondent says he instituted his action in the circuit court of the United States at Savannah, on the day of , 1870; that from that time the said Wooten never appeared in the said case as his counsel; that Hines & Hobbs alone represented him in it in court; that this pretended admission could not have been used against him if made by Wooten, and that the said complainant never came to Savannah or had any intercourse with himself or his counsel, Hines & Hobbs, and kept diligently in the background, and, as said case shows, trusted his defence to the willing witness Peeples; that this respondent frequently, and his counsel, Hines & Hobbs, did also inform R. F. Lyon and F. M. Harper that he intended to collect enough of the said notes of King, Crim & Co. to pay this respondent the amount of the debts he controlled against J. W. Buffington & Co., amounting to 4,800$; that this idea of "eight hundred dollars" being due is an afterthought, and has been trumped up to keep said King, Crim & Co. from paying their honest debts. Said complainant and his counsel had nearly three years' notice that it was not the amount claimed by re-

spondent. They tried to set it up in the trial before the jury, and the jury found against it; and respondent further says that the brief of evidence attached to said bill of complainant is not a true one; that it was drawn up and submitted to his counsel, R. K. Hines & B. H. Hill,
who represented him in this case at the trial before the jury;
119 and they refused to agree to it, and that it never was sanctioned
by the court, and they do not now agree to it, but to the contrary say it grossly incorrect, but even upon the case made by the bill it shows the whole issue of payment or not has been passed upon; that no good reason for a new trial has been shown; that the whole pretended new evidence found is newly cumulative, and the whole pretended wrongs he set up, if any exists, has resulted from his own negligence, and neglect, and ignorance; that said bill shows that the said complainant expects to prove all of said pretended payments by the evidence of Wm. M. Peeples, and yet the charges in said bill, if true, shows said Peeples perfectly unworthy of belief, for if said charges are true, he is either an idiot or is guilty of perjury on several occasions. Then, too, said Peeples was a partner with said Crim in the said firm of King, Crim & Co., against whom the suit was brought; and there is no pretence but what Peeples knew them all, and Crim was bound by this knowledge.

Respondent further says that it is not true that C. B. Wooten was leading counsel in said case; in fact the said complainant, through his counsel, knew that Wooten had never appeared in said case; that his name did not appear anywhere as counsel, but that Hines & Hobbs brought the suit & acted as solicitors in it up to the morning of the trial, when B. H. Hill, esq., was employed, and that nothing was ever said to them about any agreement between Wooten and Harper, and no effort was made to enforce it, &, if present, the said Wooten would not have sustained the pleas of the said King, Crim & Co., and that in fact they did not make any efforts by subpœna or otherwise to have Wooten's testimony for their benefit in said case.

120 Respondent admits the levy of said execution, and his intention to raise the money justly due him by complainant, and denies that there is any equitable ground for the said injunction, which, after all the other shifts of said King, Crim & Co., have been exhausted, is the last one resorted to by them to keep from paying him this debt.

And this respondent to the various interrogatories to the said bill attached, and to which his answer is especially required, answers and deposes as follows, to the best and utmost of his knowledge, information, remembrance, recollection, and belief, and as fully and particularly as he is able to do so; that is to say, to the said interrogatories, as numbers, he answers as aforesaid as follows:

1st. Suit was brought in Terrell superior court, as this respondent is informed and believes, but does not know of his own knowledge, on the note due 1st April, 1866, for $1,147.91, made by King, Crim & Co., and was disposed of by the subsequent consent-decree, by which said notes was placed in the hands of Harrison Rogers, and by him turned over to C. B. Wooten, atty. for the creditors of J. W. Buffington & Co., for collection, for their benefit.

2nd. The said notes were placed by J. W. Buffington in the hands of Harrison Rogers, with what instructions respondent does not know, (outside of the decree rendered in said case,) and whether they ever went into the hands of F. M. Harper or not respondent does not know.

3rd. Has no knowledge or belief as to the payment asked about.

4th. This respondent does not know whether the said King, Crim &

Co. took up the note and account due S. Roosevelt for $1,053.31, or not. He is informed and believes that said claim was shaved at fifty
121 per cent. or some other small portion of it, and hopes the complainant will be held to strict proof of what was the real sum they did pay.

5th. The bill was filed as alleged, seeking to protect Wm. M. Peeples from loss in the amts. pretended to have been paid Edwards and Roosevelt by said firm of King, Crim & Co., (or by Peebles, one of the partners of King, Crim & Co.,) on debts due by J. W. Buffington, and the said bill alleges their two debts to have amounted to $1,207.54, and that they were paid in full 100 cts. on the dollar. The whole object of this bill, as shown by the copy attached, and the decree so also demonstrates, was to protect W. M. Peeples, as a member of the firm of J. W. Buffington & Co., from the non-resident members of said firm, and to enjoin them from taking the assets of said firm out of the hands of Harrison Rogers without paying the debts of Buffington & Co., for which Peeples admitted he was liable. To this bill in Terrell superior court there were no parties but J. W. Buffington & Co., and no service was made upon any of them. The allegations in said bill, made and sworn to by Peeples, a member of said firm, as the decree rendered under it, bind no one but him, and certainly this side-bar and hatched-up litigation do not bind the creditors of said J. W. Buffington & Co., but the decree shows that the said claims pretended to have been paid Roosevelt and Edwards were to be taken for what was paid for them, and the jury never did pass upon what exact amount was to be credited, but left that to be ascertained afterwards.

6th. Said bill was amended as asked about, but there is no evidence in said decree what exact sum was to be credited on these notes,
122 nor is there any evidence in said pleadings of any consent by the said Haviland, Titus & Co.; Longstreet, Sedgwick & Co.; Tracy, Irwin & Co.; Pardee, Bates & Co.; that they consented to accept the alleged terms of said bill as true, nor was J. W. Buffington & Co.'s answer, filed in said bill, taken pro confesso; hence the whole effort to show the said creditors of J. W. Buffington & Co. are bound by said bill or decree is too thin and weak to need serious mention; hence it did not admit the said pretended payment of $432.50 to B. F. King; and so far as the debts due Haviland, Titus & Co., this debt had nothing to do with this litigation, but this debt was, as is well known to said complainant, levied upon a settlement of land in Randolph County, belonging to J. W. Buffington & Co., and was paid by the sale. The debts to Tracy, Irwin & Co. and Pardee, Bates & Co., amounting to about 4,800$, including interest from 1866 to 1873, are still due, and are owned by this respondent, and the said notes of King, Crim & Co. were placed in his hands to pay them, and upon being sued in the U. S. C. court at Savannah, and a fair trial before a jury being had, a verdict was rendered for the amount of $3,154.21, which, by the allowance of no interest, was certainly 1,800$ less than it should have been; but, to prevent wasteful litigation & further trouble in this matter, this respondent determined to accept it.

7th. This respondent denies any consent-decree was ever made as to amount due upon said notes. King, Crim & Co. alone are bound by that decree, and W. M. Peeples, as a member of both that firm & of J. W. Buffington & Co. The decree shows what its extent was, and this respondent does not know whether the Exhibits A, B, & C are
123 true copies or not, but hopes complainant will produce duly certified copies of the same as required by law. He demands also

true copies of the whole proceedings in the garnishements, duly certified under the statute, be attached to said bill, and not extracts made to suit the complainant's case.

8th. Respondent admits that C. B. Wooten & L. C. Hoyl did receive the notes of King, Crim & Co. sued by respondent in the U. S. C. court, from Harrison Rogers, under the decree in Terrell superior court, by and with the consent and knowledge of King Crim & Co., (but he knows of his own knowledge of no other notes or assets received by the said Wooten & Hoyl,) and they were turned over to respondent as the only creditor remaining unpaid of J. W. Buffington & Co., he having bought the claims of Pardee, Bates & Co. and Tracy, Irwin & Co., &, controlling the debt of Longstreet, Sedgwick & Co., to collect said notes of King, Crim & Co. & pay himself said debts vs. Buffington & Co. Respondent knows nothing of any receipts given by said Wooten & Hoyl for any notes or claims of his own knowledge, nor other claims received except this. The note on Boyd & Wilson was placed in the hands of Wooten & Hoyl by J. W. Buffington & Co., as he has been informed, to collect, and, as he is informed and believes, it was collected and paid out to judgments on garnishements to Wm. M. Peeples and of Nashville, & other creditors of said Buffington & Co., and the proceeds of said note, as was well known to King, Crim & Co., was, less the fees of said attorneys, fully disposed of in this way, and that King, Crim & Co. had no connection with it, they having obtained full credit for it, as part of the purchase-money of said goods, and hence it has been improperly
124 lugged into this case with the hope of adding confusion to it, although the said complainants well knew the liability of said King, Crim & Co. could not be increased or diminished by the solvency or insolvency, payment or non-payment, of said note of Boyd & Wilson for $4,100, except as indorsers as set forth in said bill.

9th. There never was any agreement by the creditors that respondent knows of to look to the assets in the hands of Rogers & Peeples exclusively for the payment of their debts on J. W. Buffington & Co. Respondent does not know of the claims of Pardee, Bates & Co., Tracy, Irwin & Co., or Longstreet, Sedgwick & Co., being sent to Peeples. His recollection is they were sent to Wooten & Hoyl direct from New York, and respondent knows nothing of any compensation Peeples was to receive. He was not entitled to a dollar for seeing his own debts paid, and his only honest position in the matter was that he was acting to secure his creditors, but respondent believes him capable of anything that is wrong; hence he may have tried to get compensation even for this. Peeples no doubt controlled and directed the bill, under the pretence, however, that it was to secure his creditors in New York from his partner's efforts to get the notes and misappropriate the proceeds of the same. Peeples evidently had as his principal object in said bill the desire to protect himself.

9th. Of his own knowledge this deponent knows nothing as to the garnishements. He denies that any true copies of the same, duly certified to, are attached to said bill, & demands it shall be done. He denies that he was a party to the same or is bound by any pretended judgment in said proceeding. The whole matter was an effort of said King, Crim & Co. to commit the creditors of J. W. Buffington & Co. to their view of what was due on their notes, and it was ex parte;
125 besides this the said judgments on said garnishements were, as alleged in said bill, set aside, and became functus officio, and hence binds no one, much less the creditors of J. W. Buffington, to wit, Tracy, Irwin & Co., Pardee, Bates & Co., who were no parties to said

garnishement. This pretended answer of King, Crim & Co. was filed and sworn to on 29th May, 1866, in which it is falsely set up that only $1,885.08 was due on these notes; whereas the consent-decree was taken by the approval of said King, Crim & Co. on the 30th of November, 1866, more than six months afterwards, and nothing was said in the original bill or the amendment filed on 26th November, 1866, or the decree as to the B. F. King note, $432.00, Edwards' amt. $232.50, and the worthless cotton-seed $988.75, total $1,653.25, but only the payment to Edwards & Roosevelt; and as said record shows said Peeples to have sworn so recklessly in this case, this respondent has no hesitation in saying that said pretended answer was false, and so known and therefore disregarded, and that it did not show trut'fully the balance due the creditors of J. W. Buffington & Co., and that King, Crim & Co. was perfectly cognizant of the falseness of this pretended account. Respondent knows nothing of his own knowledge of any judgment taken at the time asked about on this garnishement, or whether the exhibit is a copy of the same.

10th. Respondent admits the payment of the $784 to him as agent of Longstreet, Sedgwick & Co., but states distinctly that it was paid him on the claim of said house, and not on said garnishement, or the judgment thereon, and that King, Crim & Co. paid that amount, was always admitted, and the jury allowed it in their verdict, and respondent
126 denies anything so improperly and evasively charged in said bill to the contrary. The said credit was admitted by the counsel of this respondent in their argument to the jury.

11th. Respondent has no knowledge of any payment made by Peeples of $662 to Haviland, Titus & Co. He was informed their debt was levied upon the land in Randolph. Peeples bought it at shff. sale; paid the sheriff for it, & they got the money, but the land belonged to J. W. Buffington & Co.

12th. Respondent does not know anything of the payment of $225 to Harper, and 300$ to Wooten, of 200$ to the sheriff on fi. fa., but he has been informed and believes that it was 220$ paid Harper, and that it has been credited on the first note he paid, and that the 300$ paid Wooten was for entirely a different transaction, and has nothing to do with these notes, and he knows nothing about the facts asked him as to the fi. fa. and affidavit of illegality thereto, or the judgment of the court setting it aside.

13th. This respondent claimed as due to him, as purchaser thereof, upon the said notes of King, Crim & Co., the amount of the claims he controlled and owned, to wit:

The claim of Tracy, Irwin & Co., to wit, notes J. W. Buffington & Co.:

1 note dated 4 Nov., 1865, a 4 mo	$685 74
" " " 6 Oct., 1865, a 4 mo	422 05
The claim of Pardee, Bates & Co., to wit:	
1 a/c on J. W. Buffington & Co., due 1 Jan'y '66	2,048 54
Total principal	3,156 32
Interest to June, '73	1,647 00
Grand total due	$4,803 32

And as this respondent is called upon for a calculation or esti-
127 mate to show how said jury could have arrived at the sum of said verdict, though he does not pretend to say it is the exact calculation made by them, he gives the following as the one:

Amt. of 4 notes of King, Crim & Co., sued upon	$4,588
Credited as follows:	
Amount claimed in original bill	1,207 54
" paid Handley	784 00
" " Harper	221 00
" " sheriff	200 00
	$2,412 54
Balance	$2,175 46
Int. from 1866 to 1873, 7 y'rs	1,065 00
	$3,240 46
Interest disallowed	86 25
Verdict	$3,154 21

Since said trial, however, it turns out Peeples did pay in fact some $270 on said Roosevelt claim less than he swore he had paid, and which verdict is at least 1,800$ too little.

Respondent controlling these aforesaid claims on J. W. Buffington & Co, was entitled to have them paid out of these notes, and they were transferred to him to sue & collect them and pay himself. The shifts of the said King, Crim & Co. had been so ingenuious and successful at first, through Peeples pretending to be anxious to protect the creditors of J. W. Buffington & Co., and filing his bill, in thus filing a false answer to the garnishement, and now taking one turn and then another, and all the time really trying to deceive and defraud these creditors, that after many efforts by himself & C. B. Wooten, his counsel, finding no chance to get an honest statement from King, Crim & Co. as to what
128 . they had paid, and what was due, and being perfectly willing to allow what was fair and take the balance, he was forced to bring this suit. He went to Dawson, Terrell County, several times; he utterly failed to get any satisfaction. The said King, Crim & Co. evidently had determined never to pay him a dollar, said Crim and Peeples so stated, and that frequently, to witness. They then claimed that the receipt for $1,808 given "for money paid on goods," was a payment on these notes. They so swore in their interrogations, and Peeples so swore on the trial before the jury. They now admit this was not true. The payment to Roosevelt was then claimed, and full payment of $1,053.54, they now admit it is false, and only $812.54 is claimed, and yet Peeples swore to it in his original bill, and again implicitly in the amendment; then in answer to the garnishment; then in his interrogatories, and after all he was compelled to admit on the trial he know nothing about it, and Crim paid it. Now it appears he only paid a portion, if any, of it. From this conduct respondent felt then and feels now he could not trust to said Crim and Peeples. He claimed the whole amount of his debts against J. W. Buffington & Co. amounting to $4,800, and he knows of his own knowledge not one bona-fide payment on the notes. The $784 paid him was paid as agent for Longstreet, Sedgwick Co., while his agent by way of compromise of their debt, from the trial at Savannah, he is convinced the jury had no right to cut him out of nearly 1,800$ of interest due on these notes by only giving him $3,154.21 in their verdict, but he accepted it to save further trouble and delay. He never has admitted to said complainant that only seven or eight hundred dollars was due—all such statements are utterly false. There was due to him much more

129 than his verdict as the claims will show. The jury have settled the amount due by King, Crim & Co. at $3,154.21 by their verdict, but without interest, which would have been very considerably more.

14th. This respondent knows of his own knowledge nothing whatever as to the note of Boyd & Wilson for $4,188, nor of its being given to Wooten & Hoyl, or its being collected. What he has stated as to it was from information only.

15th. Respondent knows nothing of any agreement between Wooten & Harper as to his case not being tried in the absence of either, but he does know no motion was made to continue said case on this account, and that the said Lyon & Harper were both informed, as well as this respondent and his attys., that said Wooten was absent on account of sickness. It was talked about by them the day before the trial, and no mention was made then or at the trial of any such agreement, and said Wooten would have been subpœnaed or his interrogatories taken if desired, which was not done by said King, Crim & Co.

16th. This respondent answering says that he is the legal owner of said notes of J. W. Buffington & Co., formerly owned by Tracy, Irwin & Co., and that he bought them and said account of said Pardee, Bates & Co. or said J. W. Buffington & Co. for a fair and bona-fide consideration, and that no one else has any title to or interest in the same, and that as such creditor of the said firm of J. W. Buffington & Co. he was entitled to the said notes of King, Crim & Co. sued on, and that his title as creditor on said notes was never questioned in said suit vs. King, Crim & Co., and cannot be questioned now; but that he, as
130 the bona-fide holder of said four notes, without any knowledge of any payments on the same, was entitled to receive at least the sum of $4,800 due him by Buffington & Co.

And having fully answered the said bill of said complainant, without this that there is any other matter or thing which he is advised and believes it is material for him to answer, this respondent prays to be hence dismissed with his proper costs, in this behalf most wrongfully sustained. And this defendant will ever pray, &c.

HINES & HOBBS,
Defts'. Sols.

UNITED STATES OF AMERICA,
Southern District of Georgia:

GEORGIA, *Fulton County:*

Personally came before me James M. Handley, who, being duly sworn, deposeth and saith, that the facts stated in the foregoing answer, so far as they relate to his own knowledge, information, and belief are true, and so far as they are derived from or depend upon the knowledge, information, and belief of others he believes them to be true.

J. M. HANDLEY.

Sworn to and subscribed before me this the 31st day of July, 1873.
A. E. BUCK,
Clerk U. S. Cir. Court, N. Dist. Ga.

(Endorsed:) U. S. C. court, November term, 1873. John B.
131 Crim vs. James H. Handley, C. B. Wooten, W. M. Peeples, & W. H. Smyth. Answer of J. M. Handley. Filed July 31st, 1873. Jas. McPherson, clerk. Hines & Hobbs for defendant.

And afterwards, to wit, on the day and year aforesaid, comes the defendant, James M. Handley, by his counsel, and files his demurrer to the bill of said complainant.

Demurrer of J. M. Handley.

U. S. C. court, southern dist. Ga.

JOHN B. CRIM
vs.
JAMES M. HANDLEY, C. B. WOOTEN, W. M. Peeples, W. H. Smyth.
} Bill for new trial, injunction, &c.

And now comes the said defendant and demurs to said bill, and for cause of demurrer showeth—

1st. That there is no equity in said bill.

2nd. That the said Wooten and Peeples have improperly made parties thereto.

3rd. That said bill shows that said complainant has by his own negligence and laches lost any rights he may have had, without the fault or fraud of this defendant.

Wherefore this defendant prays the judgment of this court whether he shall be called upon to answer further.

HINES & HOBBS,
Sols. for Deft.

132 We certify that in our opinion the above demurrer is well founded in point of law.

July 31st, 1873.

HINES & HOBBS,
Sols. for Deft.

GEORGIA, *Fulton County:*

I do solemnly swear the above demurrer is not interposed for the purpose of delay.

J. M. HANDLEY.

Sworn to and subscribed before me this July 30th, 1873.

A. E. BUCK,
Clk. U. S. Cir. Court, N. Dist. Ga.

(Endorsed:) U. S. C. court, S. dist. Ga. John B. Crim vs. James M. Handley, C. B. Wooten, Wm. M. Peeples, W. H. Smyth. Bill in equity Demurrer by J. M. Handley. Filed July 31, 1873. Jas. McPherson, clerk. Hines & Hobbs, sols. for defendants.

And afterwards, to wit, on the day and year aforesaid, came the defendant, C. B. Wooten, by his solicitors, and filed his answer, as follows:

Separate answer of C. B. Wooten to the bill of complaint of John B. Crim in said court.

In the fifth circuit court of the United States for the southern district of Georgia. In equity.

JOHN B. CRIM, COMPLAINANT,
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, & *James M.* Smyth, defendants.
} Bill for discovery, relief, and a new trial.

Separate answer of Council B. Wooten, one of the defendants in the case above stated:

This defendant, now and at all times, saving and reserving unto him-

self all and all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to such parts and so much thereof as he believes it is material or necessary for him to make answer to, answering says:

That he has no interest whatever in said litigation, and no connection therewith except as attorney for his co-defendant, J. M. Handley. Further answering this defendant gives the following summary of the history of his knowledge of and connection with the entire transaction: In the year 1866 this defendant, as an attorney at law, was consulted by William M. Peeples, who stated that he was one of the firm of J. W. Buffington & Co., and likewise one of the firm of King, Crim & Co., who were the successors of first-named firm; that said firm of J. W. Buffington & Co. were largely indebted to said King, Crim & Co. and to New York creditors; that his co-partners in the said firm of J. W. Buffington & Co. were insolvent, and that he apprehended loss to
134 said King, Crim & Co. and trouble to himself from said New York debts, unless something could be done for their relief in the premises. He stated further that said J. W. Buffington & Co. had placed in the hands of Harrison Rogers, as their agent, for collection, four notes on King, Crim & Co., to the amount of some $4,500; that he believed that they intended to trade said notes before maturity, or make some disposition of them, with a view to avoid the payment of said debts. He expressed a desire to save said King, Crim & Co., harmless, and to protect said creditors as far as practicable, by having the assets of said firm, then in the hands of said Rogers, credited with and set off by the claim in favor of said King, Crim & Co., the balance remaining to be appropriated, as far as it would go, to the payment of said New York debts. Defendant advised him that in his judgment this could be done by a bill in equity, and accordingly the said Peeples filed his bill to Terrell superior court on this basis and to this end, the allegations in which bill, as well as subsequent proceedings thereon, appears from a copy thereof attached as an exhibit to complainant's bill.

By the decree in said case, as defendant understood and intended it, the said King, Crim & Co. were to be allowed all proper credits and sets-off on said notes, and the balance due thereon was to be paid by the said King, Crim & Co. and applied to the payment of said New York debts. This defendant will state here that pending said bill, and before the decree, said New York claims—the claim in favor of Longstreet, Sedgwick & Co., that in favor of Pardee, Bates & Co., and that in favor of Tracy, Irwin & Co —had come into his hands for col-
135 lection. Defendant, thus representing all the parties at interest in said notes under said decree, did, after the rendition thereof, take said notes out of the hands of the said Harrison Rogers, giving him a receipt therefor, and this he did with a view to settle the matter, in accordance with the spirit and meaning of said decree; that is to say, by allowing said King, Crim & Co. their proper credits and sets-off, collecting the balance and applying the same to said New York debts. In pursuance of this idea, said Peeples, for the said King, Crim & Co., soon thereafter paid said Longstreet, Sedgwick & Co. $784, which defendant, by calculation, ascertained to be their pro-rata share of the balance after allowing said King, Crim & Co. all credits & sets-off at that time claimed by them. When subsequently, however, defendant applied to said Peeples, who seemed to control the matter, for payment of the balance remaining on said notes, so as to settle with the other creditors, he refused to pay anything, saying that the whole amount had

been paid. Defendant did not understand how this could be, as nothing had been paid him since the pro rata of Longstreet, Sedgwick & Co.; but defendant, being very desirous to settle the matter, proposed to allow said King, Crim & Co. all the credits claimed by them in their answer to garnishments previously made by them, which answer, after allowing everything claimed by them, showed a balance due of some 1,834, as well as respondent now recollects.

Defendant proposed to settle on this basis, and to deduct from said amount the sum paid Longstreet, Sedgwick & Co. This offer was declined. Defendant, with a hope of effecting a settlement on this line, caused a levy of the fi. fa. issued from the judgment on the gar-
136 nishment against E. B. Loyless & Co. for $1,834, or whatever sum it was; but said Peeples filed an affidavit of illegality to said fi. fa. and moved to set the same aside, because no judgments had been entered up against the defendants J. W. Buffington & Co. Defendant from time to time had conversations with complainant, who seemed to be vigilant in regard to the matter and fully aware of the different turns and phases which the transaction assumed.

Defendant told complainant that he wanted to settle the matter; that he was willing to admit all the credits claimed in the garnishment answer, and then to deduct the amount paid Longstreet, Sedgwick & Co., and the $200 paid by said Peeples, on filing his affidavit of illegality, which would leave a balance of principal due of only $850. This statement and proposition was made at different times to complainant, who did not accede to it, but seemed to prefer to trust the declarations of said Peeples, who stated that there was nothing due.

Defendant most positively denies that he did anything to mislead said complainant or said Peeples; on the contrary, he dealt with them in the spirit of candor and frankness. They repudiated him in the relation of client and attorney. They ignored his advice, refused to adopt his suggestions, or to settle on the terms which he conceived to be most liberal for them. This defendant, in view of his relations to all the parties, felt special solicitude to have the matter adjusted; but, seeing that said Peeples was resorting to every subterfuge to defeat the payment of what was due on said debt, and that complainant acquiesced in his conduct in relation thereto, this defendant communicated these facts and his conclusions in the premises to the said J. M.
137 Handley, who in the mean time had succeeded to the right to control said notes by becoming the owner and transferee of said New York claims. Handley thereupon directed this defendant to turn said notes over to Mess. Hines & Hobbs for suit in the United States circuit court, which was accordingly done. This measure was not adopted until the makers of said notes had evinced a stubborn determination not to pay what was clearly due on the same. This defendant did not enter any credits on said notes, for the reason that he did not know what amount was proper to go on them, and he and Peeples did not agree touching the matters. Defendant was willing and offered to allow in settlement everything claimed by them in the aforesaid answers to garnishments, but he had no knowledge of the justness or correctness of the claims contained therein, except as he derived the same from the representations of said Peeples or of the said King, Crim & Co. He deemed it, therefore, proper to leave them to bring against said suit in the United States court the credits and sets-off to which they might be entitled, so that all matters appertaining thereto might be justly passed upon and the whole question satisfactorily adjudicated. This defendant, further answering, denies that either he alone, or he and said Hand-

ley together took away from the clerk's office of Terrell superior court and secreted or in any way withheld said bill, amended bill, or decree. He knew nothing of the whereabouts of said papers, except as being in said clerk's office, where defendant learns they were found directly after the late trial, when defendant was in the city of Macon, where he had been for some days confined to his home by sickness.

This defendant most solemly protests that he never had any
138 motive or intention to be the instrument in perpetrating a wrong on complainant or his co-partners. He would scorn such an office, notwithstanding the in'uendos contained in complainant's bill. And this defendant confesses his inability to see what complaint they can make for having the whole controversy between them and said New York creditors submitted to the adjudication of a tribunal eminently distinguished for ability, as well as for the administration of impartial justice. Indeed defendant never heard any complaint until since the late verdict against them. Defendant supposes that if they had calculated correctly and won, it would have been all right, but as they miscalculated and lost, it is all wrong.

In answer to the interrogatories this defendant says:

1st. That suit was brought to the May term, 1866, of Terrell superior court, in favor of J. W. Buffington & Co. vs. King, Crim & Co., on the first of said four notes, and the same was dismissed, as well as defendant now remembers. The records of said court will show.

2. That all of said notes were placed by J. W. Buffington & Co. in the hands of Harrison Rogers as their agent, as defendant was informed and believed. He knows nothing of any instructions given by them to said Rogers. Rogers did place one, if not all of said notes, in the hands of F. M. Harper, esq., as the attorney of J. W. Buffington & Co.

3. Defendant cannot say, of his own knowledge, that King, Crim & Co. paid off a debt for $232.50 to J. W. Edwards. He was informed by Peeples that such was the fact.

4th. About the time of the filing of the aforesaid bill, said Peeples represented to this defendant that he had taken up the Roosevelt
139 debt for $1,053.31, one Haviland claiming to represent Roosevelt; and Peebles afterwards, to wit, in 1869, as well as defendant now remembers, had a settlement in reference to the same matter, but defendant does not know upon what terms.

5. That King, Crim & Co. did file their bill in equity, returnable to the May term, 1866, of Terrell superior court against J. W. Buffington & Co. & H. Rogers. The allegation in said bill, as well as the decree thereon, can be best ascertained by reference to the copy thereof attached as an exhibit to complainant's bill.

6. By reference to said exhibit, defendant sees that the said bill was amended at the November term of Terrell superior court. A copy of said amended bill is contained in the aforesaid exhibit, and, as it speaks for itself, defendant respectfully refers to it as the best evidence of what it contains.

7. That a final or consent decree was taken at the November term, 1866, the terms, provisions, and purport whereof can be best ascertained by reference to the said copy of the same. Exhibits A, B, & C are copies of said bill, amended bill, verdict, and decree, and of the action of said court in respect to certain summons of garnishment.

8. That said Rogers did, after the decree, turn over the aforesaid note to this defendant, under said decree and in accordance therewith. He also turned over to defendant the note on Higdon & Fretwell; also a receipt given by W. M. Peeples for some small claims. Defendant did

receive these papers from said Rogers, as the attorney holding and controlling the claims of said creditors, and he did so with the view to allow the said King, Crim & Co. all just and proper credits, collect the
140 balance, and apply the same to said debts; but in this defendant was defeated by the failure and refusal of the other parties to pay what defendant understood to be just and right according to their own admissions. Rogers did, as already stated, turn over to this defendant a receipt given by said Peeples to J. W. Buffington, for certain small claim'. Said receipt is, as defendant supposes, somewhere amongst his papers, where it was placed years ago; but, in the limited search he has been able to make, he has not put his hands on it, so as to attach a copy hereto.

From his knowledge of the little scattering claims contained in it, defendant regarded it as a paper of little or no value. Said Peeples did not turn over to defendant the claims mentioned in said receipt, or pay him anything thereon; at least, he has no recollection of any such thing. Peeples represented that they were insolvent, and this comported with defendant's impressions in regard to them. As well as defendant now remembers, they were a few small scattering amounts of the old business of J. W. Buffington & Co., which they had not been able to collect, the whole amount not exceeding, perhaps, a hundred dollars. Defendant is not distinct as to the amount. The only "other" claim received by defendant from said Rogers, besides the four notes on King, Crim & Co., was the said note on Higdon & Fretwell, which defendant put in suit. He has not, however, been able to collect said note, nor is he likely to be until the makers thereof become more solvent. Such is the status of these claims; but defendant is at loss to see what they have to do, or can possibly have to do, with the question of the liability of the said King, Crim & Co. on their four notes. No money has been
141 received upon them by defendant; and if there had been, it would be matter for him to account to said J. W. Buffington & Co., or their creditors, and not to King, Crim & Co.

9. This defendant knows nothing of any agreement entered into by said creditors with said Peeples to collect and receive their debts. He does not now remember whether said claims were handed him by said Peeples or sent to him directly from New York. As well as he now remembers some of them were handed him by said Peeples, while others of them came to him directly from New York. He knows nothing of any agreement to compensate said Peeples. The bill was filed for the purpose of having the credits and sets-off in favor of King, Crim & Co., allowed on said four notes, and the balance due thereon applied to the claims of said creditors. It was at the instance of Peeples that the bill was filed for King, Crim & Co. The creditors did sue out attachments, and if defendant remembers correctly garnisheed King, Crim & Co. and E. B. Loyless & Co. They both made the same answer. By an arrangement between them, as defendant understood, the latter firm had assumed the payment of said notes. By this answer it appeared that after allowing all proper credits and sets-off claimed by them, there was due on said notes some $1,834, as well as defendant remembers, instead of 1,885, as stated in complainant's bill. Judgment was taken for that amount in favor of said attaching creditors against said E. B. Loyless & Co.; why not against said King, Crim & Co. defendant cannot now state. Defendant then representing the said King, Crim & Co. to the amount of their proper claims and sets-off against said notes, and their said
142 creditors for the balance due thereon, recognized and treated said sum as the amount then due on said notes, after making all de-

ductions claimed by said King, Crim & Co. In this he acted upon their representations, and accepted their statements under oath as true.

10. After said amount was thus fixed, defendant found by calculation the pro rata share thereof coming to said Longstreet, Sedgwick & Co. to be $784. This amount said Peeples paid them by J. M. Handley, their agent, and it is proper that this sum should go as a credit on said notes. Defendant expected the settlement to be made with the other creditors on the same basis, and the failure to do so was owing to the refusal of said Peeples, and of complainant, as stated in a former part of this answer. Defendant knew this when the trial came on, and he expected to be present and make a statement of it, but he was prevented by sickness. As to what defendant Handley knew he can best speak for himself.

11. Defendant states that Peeples did not, also as a still further credit and in extinguishment of these notes to that amount, pay off and take control of the claim of Haviland, Titus & Co. for $662. An attachment was sued out on said claim and levied on a settlement of land in Randolph County, belonging to J. W. Buffington & Co. Said claim was paid out of the proceeds of said settlement of land, and it had nothing whatever to do with the four notes against King, Crim & Co.; nor did Peeples have anything to do with said claim except that he was the purchaser of the settlement of land when it was sold by the sheriff under said attachment process, and the claim was settled with the pur-
143 chase-money paid by him for said land; said claim was paid out of the proceeds of said land and not by King, Crim & Co.

12. Defendant, further answering, says Peeples did pay F. M. Harper, as defendant understood $221, which amount is credited on the note first due. Said Peeples did not pay this defendant $300, to be credited as a part payment on said notes, and said debt is not entitled to be credited by any such sum paid to defendant. The sheriff of Terrell County did hand this defendant two hundred dollars, which he, said Peeples, paid him on taking the illegality of the execution issued from the judgment entered up on the garnishment against said E. B. Loyless & Co. The grounds of the illegality and the proceedings thereon will be best shown by reference to the records of Terrell superior court.

13. Before suit was commenced by said Handley this defendant, as the attorneys for said creditors, offered to deduct from the amount in said answers to garnishments admitted to be due, which according to defendant's recollection was $1,834 or thereabouts. He offered to deduct from that amount the $784 paid Handley, and the $200 paid the sheriff, which, according to defendant's calculation, would leave a balance due of some $850 principal. This defendant, from his knowledge of the whole transaction, derived from the representation of said King, Crim & Co., and from every other source, sincerely believed that about that sum, with interest, was justly, equitably, and legally due, and he so stated at sundry times and to different persons. Defendant proposed to take this sum, with interest, in full payment of the debt, but it was refused.

144 14. Further answering, this defendant says that the Boyd & Wilson note for $4,188 was not left in the hands of Peeples, nor of Rogers. Neither Peeples nor Rogers, nor King, Crim & Co. had anything whatever to do with it. The note was left by J. W. Buffington & Co. with this defendant. Said note was collected about the time of the maturity thereof, and the money, except the amount charged and retained by this defendant as his fees, was paid out to judgments on garnishments rendered against respondent on claims against the said J. W. Buffington & Co. in favor of creditors, other than said New York credi-

tors. One of said garnishments, as defendant now remembers, was sued out by the said William M. Peeples, and was for more than two thousand dollars. Another was in favor of a house in Nashville, if defendant is not mistaken in his recollection. Such was the disposition made of said note and of its proceeds, but defendant fails to perceive what connection that note, or any other claim, has with this litigation, or how such matters can possibly affect the question of the liability of said King, Crim & Co. on the four notes in controversy.

15. This defendant and F. M. Harper, esq., did have an understanding to the effect that both should be present at the trial of said case. Defendant does not remember that the agreement was sanctioned by the shaking of hands; that, however, may have been done. But whatever may have been the solemnity of the ceremony invoked to seal the agreement, defendant must say that he is not conscious of having violated it in letter or in spirit. He was, at the time of said trial, sick—unable to attend said court, and either by himself or his attending physician he so telegraphed the said Harper and R. K. Hines, esq., who was,
145 as defendant had repeatedly stated to said F. M. Harper and to complainant, the counsel controlling said case. Defendant expected to attend said trial, not only as associate counsel for said Handley, but as a witness in his behalf, to state such facts as were within his knowledge. Defendant had not, however, been notified by the adverse party that they expected or desired his testimony. On the contrary, he inferred from their words and actions that they expected absolute success in avoiding the payment of anything on said notes upon the testimony of said W. M. Peeples. This defendant's interposition was not invoked until after said trial, though his views were well known to complainant and to at least one of his counsel. Defendant made no secret of his opinion as to the amount due, as aforesaid, but he fully and freely expressed himself in reference thereto, to the said complainant and to F. M. Harper, esq., his attorney. They did not concur in said opinion until since said trial, when they have proposed to settle on that basis. This defendant, however, humbly conceives that the rights of said Handley are fixed and determined by the judgment rendered in his favor upon a hearing of both sides of said cause, and not by the private or individual views and opinions of this defendant. And besides it becomes this defendant to defer and bow to the superior opinion of this honorable court, as expressed in said judgment, and this he most cheerfully does.

16. This defendant has already explained how Handley came into the possession of said notes, as the purchaser and transferee of said New York claims. What he gave for said claims this defendant does
146 not know. Said Handley himself can best answer as to that.

And this defendant, having fully answered as to all matters within his knowledge, prays to be discharged, &c.

C. B. WOOTEN,
In propria persona.

GEORGIA, *Bibb County:*

I, Council B. Wooten, do solemnly swear that what is contained in this, my answer, as far as concerns my own act and deed, is true, of my own knowledge, and that which relates to the act and deed of any other person I believe to be true.

COUNCIL B. WOOTEN.

Sworn to and subscribed before me 26th July, 1873.
N. SELLERS HILL,
U. S. Com. Southern Dist. Ga.

(Endorsed:) In 5 circuit court U. S. southern dist. of Geo. John B. Crim vs. James M. Handley & others. Answer of C. B. Wooten. Filed July 31st, 1873. Jas. McPherson, clerk. Hines & Hobbs for defendants.

Replication to defendant's answer.

In the fifth circuit court of the United States, southern district of Georgia.

147 JOHN B. CRIM
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, & William M. Peeples. } In equity.

The replication of the above-named complainant to the answer of the defendants, James M. Handley & Council B. Wooten.

This repliant, saving and reserving to himself now & at all times hereafter all & all manner of benefit & advantage of exception which may be had or taken to the manifold insufficiencies of said answers, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, & sufficient in the law to be answered unto, & that the said answer of the said defendants is uncertain, untrue, & insufficient to be replied unto. Repliant without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, & not herein & hereby well & sufficiently replied unto, confessed and avoided, traversed or denied is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable shall direct, and humbly prays as in & by said he has already prayed.

R. F. LYON,
Solicitor for Complainant.

148 (Endorsed:) In 5 C. C. U. S., southern district of Georgia. John B. Crim vs. James M. Handley et al. Replication of to defendant's answer. Filed Dec'r 9, 1873. Jas. McPherson, clerk. R. F. Lyon.

TESTIMONY OF COMPLAINANT.

Affidavit of John B. Crim.

GEORGIA, *Terrell County:*

In person came before me, W. F. Orr, a justice of the peace in and for said county, John B. Crim, who, being duly sworn, says that since the trial of the case of James M. Handley against deponent, the fifth circuit court for the southern district of Georgia, in the city of Savannah, which resulted in a verdict against deponent, he has talked with C. B. Wooten as to the amount yet due and unpaid on the four notes sued on by said Handley, & that said Wooten told deponent that the verdict rendered against deponent was grossly unjust & inequitable;

that there is not now due on said four notes more than eight hundred dollars at most, and that he, said Wooten, is ready & willing so to answer and testify when called upon so to do, & that the reason he will not give his affidavit to accompany deponent's bill is that he fears the giving of such affidavit would be misconstrued by his client.

J. B. CRIM.

Sworn to and subscribed before me this July 16, 1873.

W. F. ORR, *J. P.*

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity.
149 John B. Crim v. James M. Handley et al. Affidavit of John B. Crim. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

Affidavit of E. B. Loyless.

GEORGIA, *Terrell County:*

In person came before me, W. F. Orr, a justice of the peace in and for said county, E. B. Loyless, who, being duly sworn, says that since the trial of the case of James M. Handley against John B. Crim, in the fifth circuit court for the southern district of Georgia, in the city of Savannah, which resulted in a verdict against said John B. Crim, he had talked to C. B. Wooten as to the amount yet due and unpaid on the four notes sued on by said Handley, & that said Wooten told deponent that the verdict rendered against John B. Crim was grossly unjust and inequitable; that there is not now due on said four notes more than eight hundred dollars at most, and that the said Wooten is ready and willing so to answer & testify when called upon so to do, & that the reason he will not give his affidavit to accompany the bill of John B. Crim is that he fears the giving of such affidavit would be misconstrued by his client.

E. B. LOYLESS.

Sworn to and subscribed before me this July 16th, 1873.

W. F. ORR, *J. P.*

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. John B. Crim v. James M. Handley et al. Affidavit of E. B. Loyless. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complt.

150 *Affidavit of J. C. F. Clark.*

GEORGIA, *Terrell County:*

In person came before me, the undersigned, W. F. Orr, a justice of the peace in and for said county, John C. F. Clark, who being duly sworn says, that he has held the office of clerk of the superior court of Terrell County during and since the late war, and that since the commencement of the suit of James M. Handly vs. King, Crim & Co., in United States court at Savannah, he has by request of F. M. Harper, one of the defendants' counsel, made diligent searches repeatedly in his office for the bill in equity, & decree rendered thereon, brought by King, Crim & Co. vs. J. W. Buffington & Co., & that up to the trial of said case in Savannah he was unable to find said paper; that after the decree was taken, the papers were taken from his office by C. B. Wooten, plaintiff's

atty., & James W. Handley, for settlement, and that he knows nothing more of them until after the trial at Savannah, when he found them on a table in his office, & does not know when they were returned to his office.

J. C. F. CLARK,
Clerk S. C. C. T.

Sworn to and subscribed before me this July 17, 1873.
W. F. ORR, *J. P.*

(Endorsed:) U. S. cir. court so. dist. of Ga. In equity. John B. Crim v. James M. Handley et al. Affidavit of J. C. F. Clark. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complt.

151 *Affidavit of W. M. Peeples.*

GEORGIA, *Terrell County:*

Personally appeared before me, the undersigned, a justice of the peace in and for said county, William M. Peeples, who, being duly sworn, says that after the suit of James M. Handley against King, Crim & Co. was instituted in the circuit court at Savannah, and previous to the trial of the same, the deponent made repeated and diligent search for the bill, amended bill, and the decree rendered thereon, which was filed in Terrell superior court at the May term, 1866, thereof, in favor of King, Crim & Co., among his own papers, and also in connection with J. C. F. Clark, clerk of the superior court, for said bill, amended bill, decree, &c., but failed to find them; that they were not in his possession or control, and that he knew not where they were until since the hearing of the case in Savannah. And deponent further swears that for two or three days previous to the trial of the cause at Savannah he had been very unwell, and had been much distressed and troubled with affection of his "bowels," had not slept scarcely any for three nights next preceding the trial of the case, and had taken opium very freely, and that at the time he was testifying in said case he was in very bad condition, both mentally and physically, and could not remember the facts in the case as they were, and therefore could not and did not testify to facts which he knew, for the reason that his mind was in such condition at the time from the effects of opium that he could not remember the facts that he knew did exist, and which he now can clearly testify about. Deponent further says that on a new trial *that* he will swear positively
153 to the payment of Buffington & Co.' order to Samuel Roosevelt the amount of $1,052.00, and can show it was paid and when it was paid; also the sum of ($500.00) five hundred dollars, which he paid to C. B. Wooten, and ($780.00) seven hundred and eighty dollars, which he paid to James M. Handley, by order of C. B. Wooten; also the sum of ($225.00) two hundred and twenty-five dollars, paid to F. M. Harper, atty. for J. W. Buffington & Co.; also the sum of ($432.00) four hundred & thirty-two dollars, paid to B. F. King, and the sum of ($262.50) two hundred and sixty-two $\frac{50}{100}$ dollars, paid to J. W. Edwards, as payment on said notes under the bill & decree, which amounts deponent will swear and can show were duly made as payments on said notes, and ought now to be placed as credits on said notes.

WILLIAM M. PEEPLES.

Sworn to and subscribed before me this 22nd day of July 1873.
W. F. ORR, *J. P.*

that there is not now due on said four notes more than eight hundred dollars at most, and that he, said Wooten, is ready & willing so to answer and testify when called upon so to do, & that the reason he will not give his affidavit to accompany deponent's bill is that he fears the giving of such affidavit would be misconstrued by his client.

J. B. CRIM.

Sworn to and subscribed before me this July 16, 1873.

W. F. ORR, *J. P.*

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity.
149 John B. Crim v. James M. Handley et al. Affidavit of John B. Crim. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

Affidavit of E. B. Loyless.

GEORGIA, *Terrell County:*

In person came before me, W. F. Orr, a justice of the peace in and for said county, E. B. Loyless, who, being duly sworn, says that since the trial of the case of James M. Handley against John B. Crim, in the fifth circuit court for the southern district of Georgia, in the city of Savannah, which resulted in a verdict against said John B. Crim, he had talked to C. B. Wooten as to the amount yet due and unpaid on the four notes sued on by said Handley, & that said Wooten told deponent that the verdict rendered against John B. Crim was grossly unjust and inequitable; that there is not now due on said four notes more than eight hundred dollars at most, and that the said Wooten is ready and willing so to answer & testify when called upon so to do, & that the reason he will not give his affidavit to accompany the bill of John B. Crim is that he fears the giving of such affidavit would be misconstrued by his client.

E. B. LOYLESS.

Sworn to and subscribed before me this July 16th, 1873.

W. F. ORR, *J. P.*

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. John B. Crim v. James M. Handley et al. Affidavit of E. B. Loyless. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complt.

150 *Affidavit of J. C. F. Clark.*

GEORGIA, *Terrell County:*

In person came before me, the undersigned, W. F. Orr, a justice of the peace in and for said county, John C. F. Clark, who being duly sworn says, that he has held the office of clerk of the superior court of Terrell County during and since the late war, and that since the commencement of the suit of James M. Handly vs. King, Crim & Co., in United States court at Savannah, he has by request of F. M. Harper, one of the defendants' counsel, made diligent searches repeatedly in his office for the bill in equity, & decree rendered thereon, brought by King, Crim & Co. vs. J. W. Buffington & Co., & that up to the trial of said case in Savannah he was unable to find said paper; that after the decree was taken, the papers were taken from his office by C. B. Wooten, plaintiff's

atty., & James W. Handley, for settlement, and that he knows nothing more of them until after the trial at Savannah, when he found them on a table in his office, & does not know when they were returned to his office.

J. C. F. CLARK,
Clerk S. C. C. T.

Sworn to and subscribed before me this July 17, 1873.
W. F. ORR, *J. P.*

(Endorsed:) U. S. cir. court so. dist. of Ga. In equity. John B. Crim v. James M. Handley et al. Affidavit of J. C. F. Clark. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complt.

151 *Affidavit of W. M. Peeples.*

GEORGIA, *Terrell County:*

Personally appeared before me, the undersigned, a justice of the peace in and for said county, William M. Peeples, who, being duly sworn, says that after the suit of James M. Handley against King, Crim & Co. was instituted in the circuit court at Savannah, and previous to the trial of the same, the deponent made repeated and diligent search for the bill, amended bill, and the decree rendered thereon, which was filed in Terrell superior court at the May term, 1866, thereof, in favor of King, Crim & Co., among his own papers, and also in connection with J. C. F. Clark, clerk of the superior court, for said bill, amended bill, decree, &c., but failed to find them; that they were not in his possession or control, and that he knew not where they were until since the hearing of the case in Savannah. And deponent further swears that for two or three days previous to the trial of the cause at Savannah he had been very unwell, and had been much distressed and troubled with affection of his "bowels," had not slept scarcely any for three nights next preceding the trial of the case, and had taken opium very freely, and that at the time he was testifying in said case he was in very bad condition, both mentally and physically, and could not remember the facts in the case as they were, and therefore could not and did not testify to facts which he knew, for the reason that his mind was in such condition at the time from the effects of opium that he could not remember the facts that he knew did exist, and which he now can clearly testify about. Deponent further says that on a new trial *that* he will swear positively
153 to the payment of Buffington & Co.' order to Samuel Roosevelt the amount of $1,052.00, and can show it was paid and when it was paid; also the sum of ($500.00) five hundred dollars, which he paid to C. B. Wooten, and ($780.00) seven hundred and eighty dollars, which he paid to James M. Handley, by order of C. B. Wooten; also the sum of ($225.00) two hundred and twenty-five dollars, paid to F. M. Harper, atty. for J. W. Buffington & Co.; also the sum of ($432.00) four hundred & thirty-two dollars, paid to B. F. King, and the sum of ($262.50) two hundred and sixty-two $\frac{50}{100}$ dollars, paid to J. W. Edwards, as payment on said notes under the bill & decree, which amounts deponent will swear and can show were duly made as payments on said notes, and ought now to be placed as credits on said notes.

WILLIAM M. PEEPLES.

Sworn to and subscribed before me this 22nd day of July 1873.
W. F. ORR, *J. P.*

(Endorsed:) W. M. Peeples' affidavit. John B. Crim vs. Jas. M. Handley et al. Affidavit of W. M. Peeples. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol. for complts.

Affidavit of F. M. Harper.

GEORGIA, *Terrell County:*

In person came before me, the undersigned, a justice of the peace in and for said county, Francis M. Harper, who, being duly sworn,
153 says that since the commencement of the suit of James M. Handley against King, Crim & Co., in fifth circuit court of the United States for the southern district of Georgia, in which verdict was rendered against J. B. Crim, one of said firm, at the last term thereof, he has made repeated & diligent search in the clerk's office of the superior court of Terrell County for the bill, amended bill, & the decree rendered thereon, filed in superior court of Terrell County, in favor of King, Crim & Co. against J. W. Buffington & Co., for the purpose of finding said bill and decree, to be used on the trial of the case pending in said circuit court, & was unable, with the assistance of the clerk, to find said bill and decree, that he knew nothing of the whereabouts of said bill until since the case was tried in Savannah; that he also called on C. B. Wooten, the attorney who drew & filed said bill & procured said decree, & was told by him that he did not have it & knew not where it was, & that he, deponent, did all in his power to get possession of said papers before the trial, but was unable to do so. Deponent further swears that there was a standing agreement between himself, as one of Crim's attys., & C. B. Wooten, atty., that the case in Savannah should never be tried without both C. B. Wooten & himself being present, & that he relied on this agreement as binding both parties, & that after arriving at Savannah & finding the case was likely to be tried, & that said Wooten was not present, he dispatched to Wooten at Macon, Ga., his home, to come at once, but received no reply, although said dispatch was duly delivered to said Wooten.

F. M. HARPER.

Sworn to and subscribed before me July 22, 1873.

W. F. ORR, *J. P.*

154 (Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. John B. Crim, complt., vs. James M. Handley et al, defend'ts. Affidavit of F. M. Harper. Filed July 31, 1873. Jas. McPherson, clerk.

Affidavit of R. F. Lyon.

In fifth circuit court U. S., southern district of Georgia.

JOHN B. CRIM
vs.
JAMES M. HANDLEY ET AL.

Personally appeared Richard F. Lyon, who, being duly sworn, deposeth & saith that very soon after the commencement of the suit in the 5th circuit court of the United States for the southern district of Georgia, in favor of James M. Handley against John B. Crim & Wm. M. Peeples, surviving partners of King, Crim & Co., this deponent, as one of the firm of Lyon & Irwin, and Lyon, de Gráffenried & Irwin, was employed by

Crim for its defense. The defence, so far as counсel was concerned, was conducted exclusively in the court by deponent up to the trial term when he was assisted by Col. F. M. Harper, of Dawson, as associate counsel, the whole defence or preparation in the pleading preparation of the case for trial on the part of counsel was entrusted to & conducted by deponent. Soon after employment deponent was informed that the plea relied on was one of payment, which could be fully sustained by William M. Peeples, one of the defendants, & various receipts signed by J. W. Buffington & Co., or H. C. Brown for them, &
155 the order of Mr. Wooten on Peeples in favor of Handley for $784, was furnished deponent as evidence of payment. To prove the receipts, deponent prepared a sett of interrogatories for Crim & Peeples, attached the receipts, & caused them to be executed, which was read on the trial. I also prepared at sett of interrogatories for Mr. Wooten, to which was attached the order for 784$. This sett was not executed, for the reason, as given by Peeples, that there was a dispute between himself & Wooten as to the amount of payments; that Wooten claimed that the debt was not fully paid, but that there was a balance of some 7 or 800$ still due & unpaid, whereas he, Peeples, knew that the whole was paid, & could & would prove the fact, & that he did not wish to introduce Wooten as the witness of defendant, so as to let him give his version of the payments, &c., which evidence introduced in that way would greatly embar'ass the defence & might not be overcome, or something to that effect. For this reason these interrogatories were not executed; besides it was expected & understood that both Peeples & Wooten would be present at the trial, when Wooten could be introduced if it became necessary; but under the statements of the said Peeples as to what he would testify, & show by receipts in his possession, &c., I relied exclusively on what I expected to prove by Peeples on the trial to make out the defence.

Soon after deponent's employment as aforesaid, he was informed by Peeples & by his associate counsel, Col. F. M. Harper, of the pendency of the litigation referred to in complainant's bill, & of the bill that was then filed, & of the verdict & decree then rendered, & I at once urged on my clients & associate counsel the importance & absolute necessity for a successful defence of having that record before this court on
156 the trial, & urged them to procure a proper exemplification; & when was informed that the papers were out of the office, & no record, he relied on being able to prove by his associate counsel, Peeples, & Mr. Wooten, if it should be necessary to introduce him at all, the contents of that decree, & to make the same as available as the original or exemplified copies thereof; & he would have been able to do so but for the neglect of Mr. Harper to state on the trial whether there was, in fact, a decree rendered in said cause, & in consequence of that inability the whole of that evidence was ruled out.

Deponent never saw these papers, the decree, or any part of them. He had no knowledge of them, except on the information above stated.

When Peeples failed in his evidence, as stated in complainant's bill, all of which is true as to manner & conduct of the witness, & deponent, as managing & controlling counsel, surprised, disappointed as he was, & completely thrown off his guard, he was unable, by affidavit or motion for new trial, on this ground to recover therefrom, because he did not know by what other evidence the facts could be proved in which the witness Peeples had failed; & when Mr. Harper failed to prove that the decree had been signed, so as to make it the judgment of the court in which it was rendered, deponent did not know that defect could be

cured, & never knew until he saw the original papers, & then it was too late to move for a new trial on this ground; & so as to evidence curing that of Peeples' omissions, &c.

Deponent further swears that he went to trial, & in good faith, & under the honest belief that the evidence of Peeples & his associate counsel would make out a complete defence, & he was induced to this belief solely by the statements of Peeples to this deponent before the trial as to what he would testify to. He told me that the loss of the cotton-
157 seed of $988.75, which he knew all about & would swear to, the payment to Handley, to Roosevelt, & others, the creditors of J.W. Buffington & Co., & to Mr. Wooten for them, under an express agreement with J. W. Buffifington & Co., at the time the notes were given, that debts of that firm taken up by the firm of King, Crim & Co. should operate as payment pro tanto on these notes, & that in this way, with the commissions to which he was entitled from the creditors of J.W. Buffington & Co., under their agreement with for thus receiving & collecting their said debts, would fully pay off said notes. It was on the faith of this statement that the witness would so swear, & so plainly & clearly as to leave no doubt; and when the witness hesitated as to who actually made these payments, how much was actually paid, & to whom when they were paid, stammered, became confused, & finally could not say, it was clear to the mind of deponent that the evidence of said Peeples as to these payments would be disregarded by the jury, *as under the circumstances*, & deponent under the circumstances did not know how it could be remedied by a continuance; it was a complete surprise to him as the counsel of complainant in that trial, and before the verdict was rendered, his associate counsel, Harper, had left Savannah for home, in Dawson, complaining of much indisposition. Peeples also left immediately, still indisposed or complaining thereof; & before deponent, who was left alone to protect the interest of complainant, could communicate with him except by telegraph, the motion for new trial was passed to a hearing & disposed of; and then, when defendant was put in possession of the facts on which the relief in this bill is asked, the court was adjourned, and deponent took the very earliest opportunity for that purpose.

158 Deponent was not, until after the trial & after the adjournment of the court, fully acquainted with all the facts of the case. He had had up to the trial no personal interview with his client, Crim, the complainant. Mr. Harper had informed him that his employment for the defence of this case & the contract was concluded by his partner with Crim at Dawson, & he, deponent, was referred to Peeples for information as to the defence. Peeples, as he has already stated, told him that the debt was paid, after taking off the price paid for the cotton-seed, and that he would prove it by his evidence, how it was paid, when, &c. He was informed as to the attachments & garnishment in Terrell superior court, as well *of* the proceedings in equity, but he had never seen one of the papers, although he had made all efforts to procure them; they, too, were all out of office. He did not consider the attachments & garnishments as very important, as no final judgments had been taken on them, as he was informed, & if in any wise important, could be proven by Mr. Harper or Peeples, who knew all about them.

Mr. Hines is certainly mistaken in his statement, so far as deponent is concerned, that he was frequently informed by Hines & Hobbs or either of them, or by any one for them, at any time before the trial, that they were instructed to claim the whole amount for which said notes called, except the small credit; on the contrary, at one term of the court, when deponent was as ready for trial as he ever expected to be, by com-

mon consent & on the suggestions of Mr. Hines, all the papers, pleadings, & evidence were withdrawn from the court, & by leave of the court, for the purpose of giving him an opportunity of conferring with Mr. Wooten, who was then & throughout the whole case regarded & treated as controlling counsel, with a view & the confident
159 hope, as stated, that the whole matter could & would be amicably settled, but was never consummated.

It is not true, as stated by Mr. Handley in his answer, that no plea was filed but one of payment; on the contrary, a plea of failure of consideration of said notes to the extent of the price agreed to be paid for the 888¾ bushels of cotton-seed, & of no adjudication as to much of the matters *in which in that* had by the proceedings in Terrell superior; & why these pleas were not incorporated in the exemplification attached to complainant's bill, is unknown how to deponent.

It is not true, as stated by Mr. Handley in his answer, that he told deponent shortly before the trial that he claimed them, or intended to collect enough of said notes of King, Crim & Co. to pay himself the amount of the debts he controlled against J. W. Buffington & Co., amounting to 4,800$. Deponent did have an interview with Handly on the subject before the trial, one which was not solicited by respondent, in which Handly asked deponent if the case could not be settled. Deponent replied that it could not be if complainant was required to pay anything for such settlement. Handley replied that the receipts given by Brown could not be allowed, & that certain of the creditors had not received anything, & that they ought at least to receive their share. If he stated the amount due to these creditors he does not now remember it. The creditors referred to & named by him were Pardee, Bates & Co., & Tracy, Irwin & Co. He certainly did not in that conversation pretend or claim that there was any such amount as 4,800$ due and unpaid on the notes of King, Crim & Co.

R. F. LYON.

Sworn to & subscribed before me this 31st July, 1873.

A. E. BUCK,
Clk. U. S. Cir. Ct. N. Dist. of Ga.

160 (Endorsed:) In 5 circuit ct. U. S., southern dist. of Geo. John B. Crim vs. Jas. M. Handley et al. Affidavit of R. F. Lyon. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

Affidavit of J. C. F. Clark.

GEORGIA, *Terrell County:*

Personally came before me, a justice of the peace for and in said county, John C. F. Clark, who being duly sworn, says that he is clerk of the superior court of said county of Terrell, and that as clerk of said court he made several diligent but unsuccessful searc'es upon the minutes and records of said court for the record of the verdict and decree rendered in the equity cause of King, Crim & Co. against J. W. Buffington & Co. while the original papers in said cause were out of said office; that he was called on repeatedly by F. M. Harper, attorney for J. B. Crim in the case of James M. Handley against King, Crim & Co., pending in circuit court at Savannah, for a certified copy, from the records, of said verdict and decree, but that deponent was unable to furnish it up to the time of the trial of said case in the circuit court at Savannah, for reason that he did not find it on the minutes of the court.

J. C. F. CLARK, *Clerk.*

Sworn to and subscribed before me this 31st day of July, 1873.
W. F. ORR, *J. P.*

161 (Endorsed:) In 5th circuit court southern dist. of Geo. John B. Crim vs. James M. Handley et al. Affidavit of J. C. F. Clark. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

Affidavit of Samuel D. Irvin.

GEORGIA, *Bibb County:*

Sam'l D. Irvin comes before the undersigned and, being duly sworn, saith on oath that, as a member of the firm of Lyon & Irvin and counsel for the defendants in the case of James M. Handley vs. King, Crim & Co., pending in the 5th circuit court of the United States for the southern district of Georgia, deponent, with the assistance of J. F. C. Clark, clerk of the superior court of Terrell County, Georgia, did make due & diligent search through the files of said clerk's office for the original papers in a case which had been pending in that court between King, Crim & Co., complainants, and J. W. Buffington & Co. and Harrison Rogers, defendants, said papers at the time being considered by counsel necessary to be used in evidence for the defence in said cause of Handley vs. King, Crim & Co., pending in the circuit court of the United States; that some two hours were consumed in said search, during which time every pigeon-hole and other receptacle in said office in which its files were kept was examined, but without success; not a single paper in said case could be found. The clerk at the time informed deponent that said cause had not gone to final decree, so as to require the pleadings to be recorded, and that the papers had been on file in said office since the case was stricken from the docket;
162 that he had previously made search for said papers without success, & that they had disappeared from his files without his knowledge & consent, and that he could not tell deponent where they were; this search was made either in November, 1871, or in May, 1872, deponent does not recollect which date, precisely, but at least one year or very near that length of time before the trial of the cause of Handley vs. King, Crim & Co. came off in the circuit court of the United States.

Deponent further swears that said record so sought for has never been in his power, custody, or control, nor did he, at any time during the pendency of said suit, know where it was, nor did he know of any other place to look for the same, except in the clerk's office of the court in which the search was made.

SAM'L D. IRVIN.

Sworn to & subscribed before me this day of July, 1873.
JNO. B. WEEMS,
Judge Bibb Co. Court.

(Endorsed:) John B. Crim vs. J. M. Handley et al. Affidavit of Sam'l D. Irvin. Filed July 31, 1873. Jas. McPherson, clerk. Lyon & Irvin, sols. for complt.

Affidavit of F. M. Harper.

GEORGIA, *Fulton County:*

In person came before me, the undersigned, Francis M. Harper, who being duly sworn, says that after the agreement with C. B. Wooten
163 that the case of J. M. Handley against King, Crim & Co. should not be tried without the presence of deponent & C. B. Wooten,

he went to Savannah, relying on the agreement, fully expecting Wooten to be there in accordance; that when he got to Macon, on his way to Savannah, he devoted what time he had searching for him—went to his office & all round the business part of the city, looking & inquiring for him. Being unable to find him, took it for granted that he had gone to Savannah, as the case was then set for trial. After arriving at Savannah, & finding that Wooten was not there, he called upon Mr. Hines, & stated the agreement & told him he could not go to trial without Wooten; that he, Hines having at a previous term of the court stated in his place that Wooten was leading counsel, & continued the case on his absence, deponent took it for granted *that* if Wooten failed from any cause to be there, *that* he would order the case continued, having my agreement that it should not be tried without the presence of both of us. Hines stated to respondent that they had nothing to do with Wooten, & did not want him. If we wanted him we must get him there. I then went immediately & telegraphed Wooten to come on next train without fail; receiving no reply, & got the operator to inquire if Wooten had received my dispatch. The reply came that he had, & got no reply from Wooten at all, & confidently expected on every train until the evening before the trial came off. Next day Capt. Hines informed me that he was sick. I asked him if he was going to press the case to trial in Wooten's absence. He answered he was.

Deponent further swears that while in Savannah awaiting the trial of the case, Capt. Hines approached him several times & asked him
164 for what amount he would confess judgment. I remarked to him that I was not authorized to confess for any amount; that our understanding was that the debt was paid; that Wooten only claimed about eight hundred dollars due, & that Peeples claimed that nothing was due; that neither Hines nor Handley ever intimated to me that they were going to contend for the whole amount of the note; that Capt. Hines, in his opening speech, stated to the jury that there was at least one thousand dollars due on the notes. I called upon J. C. F. Clark repeatedly for a certified copy of the record of the verdict & decree rendered in the equity cause in Terrell court, but could not get it, said clerk stating that the verdict & decree had never been recorded on the minutes.

I do know that the credit of $221.68 on the first note was not for my fee in the suit of J. W. Buffington & Co. vs. King, Crim & Co., but was for a different matter entirely; that since reading Wooten's answer my memory has been refreshed; I can so explain the matter to him that I believe he will admit that I am right about it.

F. M. HARPER.

Sworn to & subscribed before me this 2 day of August, 1873.

A. E. BUCK,
Clerk U. S. Dist. Court, N. Dist. Ga.

(Endorsed:) In 5 cir't court U. S., southern dist. of Geo. John B. Crim vs. Jas. M. Handley et al. Affidavit of F. M. Harper. Filed Aug. 2d, 1873. Jas. McPherson, clerk.

165 *Affidavit of E. B. Loyless.*

In the fifth circuit court of the United States for the southern district of Georgia.

Personally appeared Elliott B. Loyless, residing in Dawson, Terrell

County, who, on oath, says that he & William M. Peeples, composing firm of E. B. Loyless & Co., in May or June, 1866, bought out John B. Crim's entire interest in a stock of goods recently purchased by King, Crim & Co. of J. W. Buffington & Co., in Dawson, & as part of the consideration agreed to take up the unpaid balance due on the four notes of King, Crim & Co. to J. W. Buffington & Co., the subject-matter of controversy in the litigation pending in this court between said Crim & James M. Handley ; & and to secure performance of said promise deponent gave to Crim a mortgage on *individual* half of warehouse & lot & of their storehouse & lots in Dawson, which interest was then of the value of four or five thousand dollars.

Deponent was then worth some thirty or forty thousand dollars, but has since failed, & is now wholly unable to pay his debt, his failure occur'ing in 1868, & in 1869, deponent's property was sold out by the marshal of Georgia for the payment of his debts, including the property mortgaged to Crim ; that prior to that sale, Crim's lien being older & superior to all other liens against deponent, he, Crim, called on Council B. Wooten, who was then controlling these notes of King, Crim & Co. for the benefit of the creditors of J. W. Buffington & Co., to know what was due on said notes & unpaid, & Wooten sat down in his office in Dawson, as Crim told this deponent before the sale of property at marshal's sales on advances hereinafter stated, & made a calcula-
166 tion & statement of what he claimed was due & handed the same to Crim, showing a balance of between seven & eight hundred dollars ; not less than seven nor more than eight hundred dollars ; that the balance of said notes had been paid off, speaking from his own knowledge. All this was stated to Loyless by Crim, not by Wooten, & Loyless was not present at this interview. Crim thereupon attended the marshal's sale & bought in the property, paying some thousand or twelve hundred dollars, promising to give deponent's wife the benefit of said purchase when said debts were paid off, & all encumbrances & advances paid out on their property should be returned to him. He has also since that time, to relieve deponents' necessities, on the faith of this property, & on the belief that there was only a balance of some 7 or 800$ due on these debts, which was denied by Peeples, who had the management of their business, said Crim has taken up other encumbrances on said property, all of previous date to his mortgage, & made to deponent other advances, so that if the said Crim has to pay the judgment lately recovered by Handley on these , that property is utterly inadequate to re-imburse said Crim the same, & what he has paid & advanced on the same, as aforesaid, but how great the deficiency will be deponent cannot say, as it is impossible what said property would sell for ; but under the most favorable circumstances it cannot sell for enough to pay him, & he will necessarily be a loser, as this deponent has no means to replace such loss.

C. B. Wooten offered & agreed to take from deponent eight hundred dollars in full payment of these which he controlled said notes before & since the commencement of this , & the offer was refused, because Peeples insisted that he had .

167 E. B. Loyless & Co. were garnisheed by the said creditors of J. W. Buffington, under attachment sued out by Wooten as plaintiff's attorney, & they were not indebted to J. W. Buffington & Co. otherwise than on account of these notes, & and they answered as early as November, 1866, that they were indebted on this account for about 1,800$; the balance they claimed was not due, on account of payments

& worthless cotton-seed, which was allowed by the court & judgment taken for the amount so admitted, which judgment was reduced by various pay'ts & then set aside .

E. B. LOYLESS.

Sworn to & subscribed before me this 12th Dec'r, 1873.

JAS. McPHERSON, *Clerk.*

(Endorsed:) U. S. cir. court so. dist. of Georgia. In equity. John B. Crim, complt., vs. J. M. Handley and others, defend'ts. Affidavit of E. B. Loyless. Filed Dec'r 12, 1873. Jas. McPherson, clerk. Lyon & Irwin, sol'. for complt.

. It is agreed that this deposition be used, subject to the exception to it as seeking to introduce hearsay & illegal evidence, and that Wooten's affidavit be considered in evidence contradicting Crim's statement, as Wooten's actings & doings, as given.

Dec. 12, '73.

HINES & HOBBS, *Sols.*

Letter of Longstreet, Sedgwick & Co. to W. M. Peeples.

NEW YORK, *April 9th*, 1866.

Mr. W. M. PEEPLES:

168 DEAR SIR: What information did you obtain in relation to Mr. Buffington? We can learn nothing. You ought to be willing to assist your creditors all you can in obtaining their money. We wish you would write us the names of each partner of the firm of J. W. B. & Co., & their residences, together with such information as you can give us in relation to their responsibility. Tell us candidly all you know in relation to the whole matter, & oblige,

Very truly yours,

LONGSTREET, SEDGWICK & CO.

Letter of Longstreet, Sedgwick & Co. to W. M. Peeples.

NEW YORK, *April 23d*, 1866.

Mr. W. M. PEEPLES:

DEAR SIR: Your favor of the 16th inst. is at hand. The notes we send to C. B. Wooten by this mail, trusting that they will arrive in time to accomplish your purpose. We hope you will succeed in securing the notes, & any needful expense will of course be cheerfully paid by us. We answer quickly, so as to stand next to Roosevelt, if possible, & if it should happen that you cannot secure the value expressed on the notes, secure all you can, & if you can, have the notes returned to us so that we can sue Buffinton, Brown, Howe, & Spofford in this city. Thanking you for your attention,

Very truly, yours,

LONGSTREET, SEDGWICK & CO.

169 *Letter of Tracy, Irwin & Co. to W. M. Peeples.*

NEW YORK, *May* 16, 1866.

Mr. W. M. PEEPLES,
Dawson, Ga:

DEAR SIR: We have received your esteemed favor of the 10th inst.

and thank you for advices. To-day we have sent forward the two notes of J. W. Buffinton & Co. to Mr. Wooten, as suggested, and we ask your hearty co-operation with him to secure speedy payment of the amount due us. We will with pleasure do our share in providing for attorneys' fees to save us harmless. You will probably remember the confidential communication you made to the writer when you were last here, and will, we doubt not, so manage that the money will soon be directed into our hands.

Your esteemed orders shall have our best attention. Awaiting advices, we remain,

Yours, most truly,

TRACY, IRWIN & CO.

Letter of Pardee, Bates & Co. to W. M. Peeples.

NEW YORK, *June* 11, 1866.

W. M. PEEPLES, Esq.,
Dawson, Ga.:

DEAR SIR: Your favor of the 30th ulto. duly received; contents noted. We do not attach any blame to you for the course you have pursued. On the contrary, we commend it. We hope you will be
170 able to save yourself and your friends from being swindled by Buffinton. As you desired, we enclose herein our a/c, properly authenticated, against firm of J. W. Buffinton & Co., which we authorize you to collect for us on the terms mentioned in our first letter to you. We feel under obligations for your prompt response, and shall take pleasure in reciprocating your favors to us whenever it is in our power to do so. Please acknowledge receipt and say, if you can, how soon you think our claim on J. W. B. & Co. will be realized.

Yours, truly,

PARDEE, BATES & CO.

Mr. Arnold sends his best wishes.

P., B. & CO.

Letter of Pardee, Bates & Co. to W. M. Peeples.

NEW YORK, *Decem.* 10, 1866.

W. M. PEEPLES, Esq.,
Dawson, Geo.

DEAR SIR: Your favor of the 3rd inst. is duly rec'd, conveying the gratifying intelligence that our claim against J. W. Buffinton & Co. is secured, and decree taken, by which the money will be paid over on or before next term of your court. You do not say when next court will sit, but we suppose some time in Jan'y or Feb'y. We feel extremely grateful to you for bringing this matter to so successful a conclusion for us. As soon as the claim is realized by us, we shall immediately remit the $200 to you as agreed upon.

Yours, truly,

PARDEE, BATES & CO.

171 *Letter of Pardee, Bates & Co. to W. M. Peeples.*

NEW YORK, *Feb'y* 15, 1867.

W. M. PEEPLES, Esq.,
Dawson, Ga.

DEAR SIR: In your letter to me dated Dec. 3, '66, you stated you had

judgm't for our claim against J. W. Buffington & Co., and would reach the money on it (you thought) some time in Jan'y or Feb'y. Please let us hear from you again as to how the matter is progressing, & oblige,

Yours, truly,

PARDEE, BATES & CO.

Original mortgage.—E. B. Loyless to J. B. Crim.

STATE OF GEORGIA,
Terrell County.

This indenture, made this the thirtieth (30th) day of May, in the year of our Lord eighteen hundred & sixty-six, between E. B. Loyless, of the county of Webster, in said State, of the one part, & John B. Crim, of said county & State, of the other part, witnesseth that, whereas
172 said E. B. Loyless has purchased lately of said John B. Crim his entire interest in a certain stock of dry goods, groceries, hardware, & which was bought by King, Crim & Co. from J. W. Buffington & Co., & also his entire interest in the stock of dry goods, groceries, & hardware, lately purchased by W. M. Peeples, in New York, for the firm of King, Crim & Co.; & whereas as a part consideration to be paid for said goods, groceries, & hardware, said E. B. Loyless has agreed to pay off and fully discharge, so as to protect said J. B. Crim harmless entirely therefrom, all the outstanding debts & liabilities of any kind whatsoever against the late firm of J. B. Crim & Co.: Now, for and in consideration of the sum of ten dollars by the said J. B. Crim to said E. B. Loyless, in hand paid, at & before the sealing & delivery of these presents, the receipt whereof is hereby acknowledged, as well as for the better securing and protecting said J. B. Crim against the payment of any & all the debts & liabilities which are now outstanding against the two firms aforesaid, of any kind or description & all species of indebtedness against said firms, the said E. B. Loyless hath granted, bargained, & sold, & by these presents doth grant, bargain, & sell unto said John B. Crim, his heirs & assigns one undivided half interest in all that tract or parcel of land, consisting of several town *of* lots in Dawson, Georgia, all lying in one body, situated in the northwest corner, adjoining the public square, on street leading from court-house to the depot, known as the warehouse and premises now owned jointly by Loyless & Crim, & which there is now situated five store-houses, containing three acres more or less, with all the rights, members, and appurtenances to said one undivided half interest of said premises in anywise belonging or ap-
173 pertaining; to have & to hold said bargained premises to said John B. Crim, his heirs & assigns, to his & their own proper use, benefit, & behoof forever. And said E. B. Loyless for himself, his heirs, executors, & administrators, the said bargained premises unto said J. B. Crim will warrant & forever defend against the claims of himself, his heirs, & against the claims of all persons whatsoever; provided, nevertheless, that if said E. B. Loyless, his executors, his heirs or administrators shall well & truly pay, or cause to be paid, unto the creditors of King, Crim & Co., & *also* all debts due to the creditors *to due to the creditors* of J. B. Crim & Co., *all debts due to them*, & thereby save & protect said J. B. Crim entirely harmless from all of said debts & liabilities & the expenses thereof in the event of suits being instituted for said claims, then & from thenceforth, as well this indenture as the right to the property herein conveyed, shall *have determined* be void to all intents & purposes, and upon his failure so to do this, this mortgage of indemnity to remain of full force & virtue.

1

In witness whereof, the said E. B. Loyless, hath hereunto set his hand & affixed his seal the day & year first above.

E. B. LOYLESS. [L. S.]

Written, signed, sealed, & delivered in presence of us—
F. M. HARPER,
W. F. ORR, *J. P.*
[5 ten-cent int. rev. stamps.]

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity. John B. Crim, complt., vs. James M. Handly, et al., defts. Original mortgage E. B. Loyless to J. B. Crim. Filed Dec'r 12, 1873, Jas. McPherson, clerk. Lyon & Irwin, sol. for comp't.

174 *Agreement between S. Roosevelt and W. M. Peeples.*

I hereby agree to pay Mr. W. M. Peeples, on the collection of two notes which are now in suit in his name as follows, one drawn by King, Crim & Co. due 1st May, '66, for $411.11, and also one due May 1, '66, for $642.14, dollars, the sum of one hundred dollars.
N. Y. Ap'l 12, '68.

SAM'L ROOSEVELT, *Agt.*

(Endorsed:) U. S. cir. court. so. dist. of Ga. In equity. John B. Crim, complt., vs. James M. Handley et al., defts. Agreement between S. Roosevelt and W. M. Peeples. Filed Dec'r 12, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complt.

Order allowing pleas in law-case J. M. Handley v. John B. Crim, to be attached as exhibits to above stated bill & considered as part thereof.

On motion of counsel for defendants, it is ordered by the court, that the several pleas of defendants in the case at law of James M. Handley against King, Crim & Co. be attached to original bill of complainants as part of exhibits of the record of that case attached to said part thereof.

W. B. WOODS, *Judge.*

175 (Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity. John B. Crim, complt., vs. James M. Handley et al., defendants. Order allowing pleas in law-case, J. M. Handley vs. John B. Crim, to be attached as exhibits to above-stated bill, & considered as part thereof. Filed Dec. 13th, 1873. Jas. McPherson, clerk. Lyon & Irwin, sols. for complts.

TESTIMONY OF THE DEFENCE.

Letter of C. B. Wooten to E. B. Loyless.

MACON, GA., 24 *Oct.*, 1872.

DEAR SIR: I have just read your letter, and in reply have to say that you are wholly mistaken about my unwillingness to do my part about the settlement. I am ready at any time. Mess. Hine & Hobbs, are the attorneys in the case and control. I merely promised to assist them. I will meet them in Dawson at any time to aid in the matter. I assure you I do not want to put you to cost or trouble; would have gone to

Savannah before, but having but a few hours' notice, it was impossible, owing to other engagements.

Yours, truly,

176 C. B. WOOTEN.

E. B. LOYLESS, Esq.,
Dawson, Ga.

Letter from William M. Peeples to the assignees of Tracy, Irwin & Co.

DAWSON, GEO., *July 12th*, 1869.

ASSIGNEES OF TRACY, IRWIN & CO.,
New York.

GENTLEMEN: There is a fi. fa. in favor of Tracy, Irwin & Co. vs. J. W Buffinton & Co., in our superior court for about $1,200, I think, and E. B. Loyless & Co. was garnished and judgment obtained against them for $1,800, which they owed J. W. Buffinton & Co. to be divided pro rata between Longstreet, Sedgwick & Co., Pardee, Bates & Co., and Tracy, Irwin & Co. Longstreet, Sedgwick & Co.'s claim was about $1,500, Pardee, Bates & Co., $2,200; and now the fi. fa. is placed in the hands of the sheriff for levy and sales of property enough to make the $1,800 out of E. B. Loyless & Co., by order of Maj. Handley, representing the firm of Longstreet, Sedgwick & Co.; yet they have received their pro rata of the claim; he, it seems, is representing all the claims, and I am the Co. of E. B. Loyless & Co., and have done all I could to secure as much as possible for Tracy, Irwin & Co. in this case. Mr. Loyless has failed in business and settled most of his debts at 50c. on the dollar, and has had all his property sold by the U. S. marshal, and now the sheriff by
177 order of Maj. Handley has levied upon all my real estate to satisfy these claims, and all I ask of you is the favor to write to Col. C. B. Wooten to let the sheriff hold up the sale of the property until 1st Octo. or Nov'r, in order to give me a chance to raise the money out of my cotton crop or notes due me, and not bring my property to sale 1st Sept'r, when there will be no money in the country.

I can assure you of one fact, that not a cent would have been realized on the claim for Tracy, Irwin & Co., had it not been for me, and now if this matter is pressed there is older judgments against the property that will take every cent of it, and Tracy, Irwin & Co. loose the whole; but by getting the indulgence asked for and not giving publicity to the levy made by advertising, I can keep off the other parties and save the amount for Tracy, Irwin & Co.

Mr. James Willson, one of the firm, knows how I have used my energies for and in behalf of said firm.

Please let me hear from you on receipt of this and let me know if my request is granted.

Yours, truly,

W. M. PEEPLES.

P. S. I will be in New York by the middle of next month, and would like to see you; perhaps I can arrange it then by city aceptance.

W. M. P.

178 At a stated term of the circuit court of the United States for the southern district of Georgia, held at the court-room, in the city of Savannah, on the 15th day of December, in the year of our Lord one thousand eight hundred and seventy-three.

Present, honorable William B. Woods, circuit judge.

JOHN B. CRIM, COMPLAINANT,
vs.
JAMES M. HANDLEY, COUNCIL B. WOOTEN, William M. Peeples, William H. Smyth, defendants. } In equity. Bill in equity filed. Tried by agreement.

Final decree for defendants, dismissing bill.

This case, by agreement of counsel, came on for hearing at this term of the court upon the pleadings, proofs, and argument of counsel, & thereupon on consideration thereof is ordered, adjudged, and decreed that the complainant's bill be dismissed and that defendant recover of said complainant the sum of ninety-eight dollars and ten cents by them in this behalf expended to be taxed by the clerk of this court.

W. B. WOODS, *Judge.*

Thereupon the complainant, by his counsel, comes into court and asks to have an appeal from the foregoing decision & decree of this court to the Supreme Court of the United States.

179 Ordered, that said appeal be and the same is allowed, and that the clerk certify and send to the Supreme Court of the United States the record in this by the first day of the next term of the said court, and that the said complainant file within the clerk's office of this court within thirty days bond with good security in the sum of one thousand dollars for the payment of all costs & damages, to be received on said appeal by the defendants or either.

And it further appearing that the sum of money due on the judgment in favor of James M. Handley against John B. Crim which the bill & proceeding seeks to enjoin and on which a new trial is asked, to wit, the sum of thirty-two hundred & twenty dollars and forty cents for principal and interest has been paid to William H. Smyth, marshal of the State of Georgia, is now in his hands as marshal.

Ordered, that the marshal pay over to said James M. Handley or his counsel said sum of money, upon the said James M. Handley's filing in the clerk's office of this court his bond in the sum of five thousand dollars, with at least two good securities, to be approved of by the clerk of this court—conditioned to pay to the complainant the eventual condemnation or decree of the court on appeal or hereafter rendered thereon in this court & in this cause.

W. B. WOODS, *Judge.*

(Endorsed:—) U. S. cir. court, so. dist. of Georgia. In equity. John B. Crim, complt. vs James M. Handly et al., defendts. Final decree. Filed Dec'r 15, 1873. Jas. McPherson, clerk.

180 *Appeal of John B. Crim, appellant.*

In fifth circuit court of the United States for the southern district of Georgia.

JOHN B. CRIM
vs.
JAMES M. HANDLEY, COUNCIL B. Wooten, William M. Peeples, William H. Smyth. } In equity.

To the honorable the Supreme Court of the United States:

The appeal of John B. Crim, the above-named complainant and appel-

lant, respectfully sheweth that, upon the sixth day of July, in the year eighteen hundred and seventy-three, the above-named complainant filed his bill in the fifth circuit court of the United States for the southern district of Georgia against the above-named defendants and appellees, for a new trial in a case before that time pending in said court on the law side of said court & at law, being a suit at the instance of said James M. Handley, one of appellees, against the said John B. Crim and said
William M. Peeples, as surviving partners of King, Crim & Co., a
181 firm composed of Benjamin F. King, then deceased, said John B. Crim and said William M. Peeples & in which a judgment had been obtained in said court at the April term of said court for said year eighteen hundred and seventy three for the sum of thirty one hundred & fifty-four dollars & twenty cents; said bill also asked an injunction against the execution which had issued against the said John B. Crim on the hearing of said application for injunction before Judge John I. Erskine, judge of the district court of the United States for the State of Georgia, presiding in said hearing in the absence of a judge of the circuit court, refused the injunction on the grounds set out & relied on in said bill & for cause then shown by the defendants, but ordered the case for hearing at the November term of said court for the said year eighteen hundred and seventy-three; & on the 15th day of December, the year 1873, said cause came on for hearing, by consent of the parties, upon the bill and answer of the defendant, James M. Handley, Council B. Wooten, to which replication had been duly filed by complainant and the affidavits of Elliott B. Loyless, John C. F. Clark, William M. Peeples, Francis M. Harper, Samuel D. Irwin, Richard F. Lyon, Richard K. Hines. Copy of bill and the exhibits attached to complainant's said bill, together with divers letters from different persons, to wit, S. Roosvelt, Longstreet, Sedgwick & Co., Haviland, Titus & Co., Pardee, Bates & Co., Tracy, Irwin & Co., to William M. Peeples, the execution of all which were
182 duly admitted or proven & read by counsel as evidence, & all of which are now of file in the clerk's office of the said fifth circuit court of the United States for the State of Georgia in Savannah in said , & a part of the record & pts. in this cause.

That on the of December, 1873, a final decree was made and pronounced in this cause, wherein it was in substance adjudged & decreed that complainant's bill be dismissed.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, & respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, & proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed and a decree made granting complainant a new trial, & further to decree generally in favor of complainants on the merits & equity in said bill *on the merits thereof*, with costs, or such other decree as to the said Supreme Court shall seem just.

W. A. HAWKINS,
R. F. LYON,
Solicitors & Counsel for Complainant.

183 *Acknowledgement of service.*

Due & legal service of this appeal acknowledged, & citation & service thereof waived; all exceptions or matter of exceptions to other irregularity reserved.

This 11th Feb'y, 1874.

HINES & HOBBS,
Sols. for Handly & others.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. John B. Crim, complt., vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. mar., defendants. Appeal of John B. Crim, appellant. Filed Feb'y 12, 1874. James McPherson, clerk. Lyons & Hawkins.

Appeal-bond.

UNITED STATES OF AMERICA,
Southern District of Georgia.

Know all men by these presents that we, John B. Crim, principal, and O. O. Nelson & E. G. Brown, sureties, are held and firmly bound unto James M. Handley, Council B. Wooten, William Peeples,
184 and William H. Smyth, or to either of them, in the full sum of one thousand , to be paid unto the said James M. Handley, Council B. Wooten, William M. Peeples, & William H Smyth, or either of them, their attorneys, executors, administrators, & assigns; to which payment, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly & severally, firmly by these presents, sealed with our seals and dated this the 9th day of February, 1874.

Whereas, at the November term of the fifth circuit court of the United States for the southern district of Georgia, a decree in an equity cause then & there pending in said court & on the day of December, 1873, was rendered, wherein the above bound John B. Crim, principal, was complainant, and James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, were defendants, being a bill for new trial, &c., wherein the parties were at issue, & the same being then on trial, a decree was on said day of December, 1873, rendered by said court dismissing the bill after hearing all the evidence & pleadings offered and read in said cause & now remaining of file & of record in said court & in said cause, from which said decree the said John B. Crim, in open court, then & there, by order & permission of said court, appealed to the Supreme Court of the United States.

Now, if the said John B. Crim, shall, upon the hearing of said cause in the Supreme Court of the United States, fail to sustain his said appeal & shall well & truly pay all costs of said appeal & otherwise
185 charg'able against him in said cause & all damages which may be recovered against him for suing out said appeal, then the above to be void; else to remain in full force.

J. B. CRIM. [L. S.]
O. O. NELSON. [L. S.]
E. G. BROWN. [L. S.]

W. F. ORR, *J. P.*

GEORGIA, *Terrell County:*

Personally appeared John B. Crim, who, being duly sworn, says he is worth the sum of five thousand dollars in real & personal property in

the city of Dawson, the real estate being lots & stores & dwelling-house, and that he is worth said sum over & above all debts & all exemptions under the laws of the State of Georgia.

J. B. CRIM.

Sworn to and subscribed before me this 9 day of February, 1874.
W. F. ORR, *J. P.*

GEORGIA, *Terrell County:*

Personally appeared O. O. Nelson, one of the sureties on his appeal-bond attached hereto, who, being sworn, says that he resides in said county; that he is possessed of the following real estate in his own right, to wit, six houses & lots in the city of Dawson, and the following personal property, to wit, horses, mules, buggies, & wagons, amounting in value to two thousand dollars over & above all debts & exemptions under
186 the laws of Georgia.

OWEN O. NELSON.

Sworn to & subscribed before me this the 9 day of February, 1874.
W. F. ORR, *J. P.*

GEORGIA, *Terrell County:*

Personally appeared E. G. Brown, one of the sureties of John B. Crim on his appeal-bond hereto attached, who, being sworn, says that he resides in said county; that he is possessed of the following real estate as of his own property, to wit, his residence, house & lot in city of Dawson, with lands attached, and two brick store-houses in said city; and the following personal property: three buggies & plantation stock, and that he is worth the said real & personal property, over & above all debts & exemptions under the laws of Georgia, the sum of five thousand dollars.

E. G. BROWN.

Sworn to & subscribed before me this the 9 day of February, 1874.
W. F. ORR, *J. P.*

Certificate of register as to bond.

DAWSON, GA., *February 9th*, 1874.

I certify that the foregoing bond and affidavits were duly executed before William F. Orr, an acting justice of the peace, in my presence; that I know the parties, and that their signatures are genuine.
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S. WISE PARKER,
Register in Bankruptcy.

(Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. John B. Crim vs. James M. Handley et al. Appeal-bond. Filed Feb'y 11, 1874. Jas. McPherson, clerk. R. F. Lyon, sol. for appellant.

188 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, James McPherson, clerk of the circuit court of the United States of America for the fifth circuit and southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies of

their respective originals now on file and remaining of record in my office, being a complete and perfect exemplification of the record and proceedings in the suit of John B. Crim vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Savannah, in said southern district of Georgia, this 30th day of May, A. D. 1874, and of the Independence of the United States the ninety-eighth.

[SEAL.] JAS. McPHERSON, *Clerk.*

189 In fifth circuit court of the United States, for the southern district of Georgia.

JOHN B. CRIM
vs.
JAMES M. HANLY, COUNCIL B. WOOTEN, WILLIAM M. PEEPLES, & WILLIAM H. SMYTH. } In equity.

To the honorable the Supreme Court of the United States:

The appeal of John B. Crim, the above named complainant and appellant, respectfully sheweth:

That upon the sixth day of July, in the year eighteen hundred and seventy-three, the above-named complainant filed his bill in the fifth circuit court of the United States for the southern district of Georgia against the above-named defendants and appellees for a new trial
190 in a case before that time pending in said court on the law side of said court, & at law, being a suit at the instance of said James M. Handly, one of appellees, against the said John B. Crim and said William M. Peeples, as surviving partners of King, Crim & Co., a firm composed of Benjamin F. King, then deceased, said John B. Crim and said William M. Peeples, & in which a judgment had been obtained in said court, at the April term of said court for said year eighteen hundred & seventy-three, for the sum of thirty-one hundred & fifty-four dollars & twenty cents. Said bill also asked an injunction against the execution which had issued against the said John B. Crim, on the
191 hearing of said application for injunction before Judge John I. Erskine, judge of the district court of the United States for the State of Georgia, presiding in said hearing in the absence of a judge of the circuit court, refused the injunction on the grounds set out & relied on in said bill, & for cause then shown by the defendants, but ordered the case for hearing at the November term of said court for the said year eighteen hundred & seventy-three; & on the 15th day of December, in the year 1873, said cause came on for hearing, by consent of the parties, upon the bill and answer of the defendants, James M. Handley, Council B. Wooten, to which replication had been duly filed by
192 complainant, and the affidavits of Elliott B. Loyless, John C. F. Clark, William M. Peeples, Francis M. Harper, Samuel D. Irvin, Richard F. Lyon, Richard K. Hines; copy of bill and the exhibits attached to complainant's said bill, together with divers letters from different persons, to wit, S. Roosevelt, Longstreet, Sed'wick & Co., Haviland, Titus & Co., Pardee, Bates & Co., Tracey, Irvin & Co., to William M. Peeples, the execution of all which were duly admitted or proven & read by consent as evidence, & all of which are now of file in the clerk's office of the said fifth circuit court of the United States for the State of Georgia, in Savannah in said , & a part of the records & pts. in this case.

193 That on the day of December, 1873, a final decree was made and pronounced in the cause, wherein it was in substance adjudged & decreed that complainant's bill be dismissed.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, & respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made granting complainant a new trial; &
194 further, to decree generally in favor of complainants on the merits & equities in said bill, on the merits thereof, with costs, or such other decree as to the said Supreme Court shall seem just.

W. A. HAWKINS &
R. F. LYON,
Solicitors & Counsel for Complainants.

Due & legal service of this appeal acknowledged, & citation & service thereof waived; all exceptions to other irregularity or matter of exception reserved.

This 11th Feb'y, 1874.

HINES & HOBBS,
Attys. for Handly & others.

(Indorsed:) U. S. circuit court so. dist. of Georgia. In equity. John B. Crim, complt., vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth, U. S. mar., defendant'. Appeal of John B. Crim, appellant. Filed Feb'y 12, 1874. Jas. McPherson, clerk. Lyon & Hawkins. Made copy of appeal for R. F. Lyon, 1 of ., & mailed to him, at his request, Feb'y 12, 1874.

(Indorsement on cover:) No. 197. John B. Crim, appellant, vs. James M. Handley, Council B. Wooten, William M. Peeples, and William H. Smyth. S. Georgia C. C. U. S. Filed 19th October, 1874.